

# EXHIBIT C

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2 IN THE MATTER OF AN ARBITRATION UNDER  
3 THE UNCITRAL ARBITRATION RULES BETWEEN

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TELENOR MOBILE COMMUNICATIONS, AS,

4

Claimant,

5

vs.

Volume IV

6

STORM, LLC,

7

Respondent.

8 -----x

9

10

666 Fifth Avenue

New York, New York

11

12

December 18, 2006

9:15 a.m.

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16

17 B E F O R E:

18

KENNETH R. FEINBERG, Chairman

19

WILLIAM R. JENTES, Arbitrator

20

GREGORY B. CRAIG, Arbitrator

21

22

23

24 Reported by:

25

Amy E. Sikora, CRR, CSR, RPR, CLR

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2 APPEARANCES:  
 3 For the Claimant:  
 4 ORRICK, HERRINGTON & SUTCLIFFE, LLP  
 666 Fifth Avenue  
 5 New York, New York 10103-0001  
 6 BY: ROBERT L. SILLS, ESQ.  
 JAY K. MUSOFF, ESQ.  
 7  
 8 -and-  
 9 ORRICK, HERRINGTON & SUTCLIFFE, LLP  
 Tower 42, Level 35  
 10 25 Old Broad Street  
 London, EC2N 1 HQ  
 11 DX: 557 London/City  
 12 BY: PETER O'DRISCOLL, ESQ.  
 13  
 14  
 15 For the Respondent:  
 16  
 17 LOVELLS, ESQS.  
 590 Madison Avenue  
 18 New York, New York 10022  
 19  
 BY: PIETER VAN TOL, ESQ.  
 20 GONZALO S. ZEBALLOS, ESQ.  
 ERIC Z. CHANG, ESQ.  
 21  
 22  
 23 ALSO PRESENT:  
 24 KAREN D. THOMPSON, ESQ., Orrick  
 25 MAYSIE ANDERSON, ESQ., Orrick

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1 Proceedings  
 2 be useful if you would indicate what you  
 3 think are the orders that apply to this  
 4 panel as opposed to the parties.  
 5 MR. VAN TOL: Absolutely.  
 6 ARBITRATOR JENTES: Okay.  
 7 MR. VAN TOL: That leads me to my  
 8 first point, gentlemen, which is the  
 9 controlling order here is the  
 10 December 1, 2006 ruling from the  
 11 Ukrainian court. There's been no  
 12 subsequent ruling by any Ukrainian court  
 13 saying that that order is ineffective or  
 14 improper in any way. So it still  
 15 stands, as it did when it was issued.  
 16 It binds Storm automatically and it  
 17 prohibits Storm from going forward  
 18 today.  
 19 Now, we have buttressed that  
 20 opinion with the Logush expert evidence  
 21 showing that the December 1 ruling is  
 22 proper, both substantively and  
 23 procedurally.  
 24 Telenor Mobile, on the other  
 25 hand, has provided you with absolutely

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1 Proceedings  
 2 THE CHAIRMAN: Good morning,  
 3 everybody. This is a continuation of  
 4 the matter of an arbitration under the  
 5 Uncitral arbitration rules between  
 6 Telenor Mobile Communications as  
 7 claimant and Storm, LLC as respondent.  
 8 I think the best place to start  
 9 this morning, on behalf of my fellow  
 10 panel members, is to request of Storm,  
 11 Pieter, that you summarize your late  
 12 Saturday night e-mail to the panel  
 13 explaining Storm's latest position  
 14 concerning this arbitration, what you  
 15 propose to do this morning, and what you  
 16 feel you cannot do this morning, so that  
 17 we have a brief summarization of exactly  
 18 where Storm stands as of 9:30 a.m. this  
 19 morning, December 18th.  
 20 Pieter.  
 21 MR. VAN TOL: Thank you,  
 22 Mr. Chairman. I'll be brief.  
 23 ARBITRATOR JENTES: If I could  
 24 also ask, since we have so many orders  
 25 from different courts, I think it would

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1 Proceedings  
 2 nothing from any Ukrainian law expert  
 3 regarding the December 1 ruling.  
 4 Instead, and this is in keeping with its  
 5 usual approach, it's asking you to  
 6 effectively overturn, ignore, the  
 7 December 1 ruling.  
 8 Gentlemen, we submit that that is  
 9 improper. If Telenor Mobile wants to do  
 10 something about the December 1 ruling,  
 11 it should go to Ukraine. The ruling  
 12 from the court said you have X number of  
 13 days to appeal. That's a very expedited  
 14 schedule. Telenor Mobile didn't take  
 15 the court up on that offer.  
 16 We know from their submissions,  
 17 they have competent Ukrainian counsel.  
 18 They participated in other matters in  
 19 Ukraine. They know their way around the  
 20 court system, but they chose not to do  
 21 anything about the December 1 ruling.  
 22 And, indeed, I note on several  
 23 occasions over the course of the past  
 24 few months the tribunal has asked  
 25 Mr. Sills, why is it that you haven't

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2 gone to the Ukrainian courts. I would  
3 submit that you haven't gotten a  
4 sufficient answer, but the answer you  
5 did get before was, more or less, why  
6 should we go there. The appellate  
7 record's been developed already and  
8 there's no reason -- there's no way for  
9 us to change it.

10 Well, that's not the case with  
11 respect to the December 1st ruling.  
12 It's out there. It could have been  
13 appealed by Telenor Mobile and they  
14 decided not to.

15 So the standard today is whether  
16 or not Storm has good cause for what  
17 it's doing. Mr. Sills cited the  
18 Uncitral default provisions in  
19 Article 28 of the rules. But they apply  
20 when a party fails to appear, quote,  
21 without showing sufficient cause for  
22 such failure.

23 Well, we're here and we're  
24 telling you why there's sufficient  
25 cause, and it's hard to conceive of a

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2 and Alpren were part of the same  
3 injunction, even though we submit  
4 they're not parties. We, their counsel,  
5 submits they're not parties to the  
6 Southern District action.

7 But what Professor Logush was  
8 saying in her opinion is the injunction  
9 really only has full effect if you  
10 enjoin Telenor Mobile, over which there  
11 is jurisdiction in the Ukraine. But,  
12 really, you know, if it binds Storm,  
13 that's enough for us not to go forward.  
14 If there were a ruling from the  
15 Ukrainian court saying it doesn't apply  
16 to Telenor Mobile, our position wouldn't  
17 change. We would still say today we  
18 can't go forward.

19 Now, you've led me to my next  
20 point which is, as we expected,  
21 Mr. Sills is relying on Judge Lynch's  
22 December 15th order. And that was  
23 really one of the purposes of my e-mail  
24 was to lay out what effect, if any, that  
25 that ruling has on the December 1

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2 more sufficient cause than an injunction  
3 barring us from going forward. An  
4 injunction from a court in Storm's home  
5 country. An injunction that also  
6 operates against Telenor Mobile. No one  
7 debates that Telenor Mobile appears or  
8 is in Ukraine and that the court would  
9 have jurisdiction over Telenor Mobile.

10 ARBITRATOR CRAIG: Why do you  
11 think Telenor Mobile is bound by that  
12 order, when Telenor Mobile is not a  
13 party?

14 MR. VAN TOL: Telenor Mobile is  
15 not a party to the action, but Telenor  
16 Mobile is a party to the injunction, and  
17 that's what Professor Logush was  
18 explaining in her opinion.

19 ARBITRATOR CRAIG: That's a new  
20 concept for American lawyers to sort of  
21 get their heads around.

22 MR. VAN TOL: And it is for me,  
23 too, Mr. Craig, because that's what  
24 Judge Lynch did in the recent  
25 proceedings when he found that Altimor

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2 ruling. And as you can see, it has no  
3 effect.

4 Judge Lynch did not say the  
5 Ukrainian court was wrong to issue the  
6 December 1st ruling. Judge Lynch did  
7 not overturn the December 1 ruling. He  
8 did not do anything that would disturb  
9 that ruling.

10 ARBITRATOR JENTES: Let me ask --  
11 I've read his conclusion several times,  
12 and he says that Storm, Altimor, and  
13 Alpren, but let's focus on Storm, are  
14 enjoined from bringing, so you're not  
15 bringing, but you're attempting to cause  
16 the enforcement of any legal action in  
17 the Ukraine that would disrupt, delay,  
18 or hinder in any way the arbitration  
19 proceeding.

20 It does seem to me that his  
21 injunction stops you from attempting to  
22 delay and hinder this arbitration  
23 proceeding. That's why I asked you.  
24 I'm just trying to understand what your  
25 position is vis-a-vis Judge Lynch and

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2 what we're supposed to do.

3 MR. VAN TOL: And I parsed that  
4 language carefully myself. What he said  
5 is, don't bring an action in Ukraine.  
6 We haven't done that, we're the  
7 defendant.

8 ARBITRATOR JENTES: No, I  
9 understand that.

10 MR. VAN TOL: Don't enforce the  
11 action in the Ukraine. We haven't done  
12 that either. We're the defendant. We  
13 haven't done anything to enforce.  
14 That's why we got Professor Logush's  
15 opinion which shows you it's a  
16 self-executing ruling. It says right in  
17 there it shall take effect immediately,  
18 it's automatically binding, and it goes  
19 to the state enforcement service for  
20 enforcement. Storm has not done  
21 anything to enforce that order.

22 THE CHAIRMAN: Yet.

23 MR. VAN TOL: Well, you say yet.  
24 We're the defendant, so I don't know  
25 what it is a defendant would do to --

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1 Proceedings

2 MR. VAN TOL: What I propose to  
3 do today is make the application I just  
4 made, which is to adjourn this hearing  
5 until such time as the Ukrainian court  
6 action has run its course. And that we  
7 reconvene at a later point.

8 What I cannot do today is, I  
9 cannot go forward with argument or  
10 proceeding on the merits of the action  
11 or the arbitration because that would  
12 violate the December 1 injunction from  
13 the Ukrainian court.

14 THE CHAIRMAN: You also had an  
15 alternative.

16 MR. VAN TOL: Our alternative  
17 grounds doesn't go to the merits, it  
18 goes to the jurisdiction, is really a  
19 reminder, because I think we really  
20 fully laid this out for the tribunal. A  
21 reminder that there was a clarification  
22 from the Ukrainian court.

23 In your October 22nd order, as I  
24 read it, and I think I read it right,  
25 the basis of jurisdiction is that there

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2 THE CHAIRMAN: Well, picking up  
3 on Bill's point, as I read Judge Lynch's  
4 last conclusion, he says that Storm is  
5 enjoined from attempting to cause the  
6 enforcement. Attempting to cause the  
7 enforcement, of any legal action in the  
8 Ukraine that would disrupt, delay, or  
9 hinder the arbitration.

10 MR. VAN TOL: Right. We have no  
11 plans to do so.

12 ARBITRATOR JENTES: Your point  
13 is, all you're doing is, you're saying  
14 there's a self-enforcing order over  
15 here. We're calling it to your  
16 attention. And it stops you from  
17 proceeding and whatever flows from that  
18 is not your doing.

19 MR. VAN TOL: That's exactly  
20 right.

21 ARBITRATOR JENTES: Okay.

22 THE CHAIRMAN: So what do you  
23 propose, again, to summarize your  
24 e-mail, Pieter, what do you propose to  
25 do today?

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2 is a severable agreement to arbitrate.  
3 And in that October 22nd award you said  
4 that it was apparent to you from the  
5 record before you that the Ukrainian  
6 courts did not consider severability nor  
7 even the existence of the arbitration  
8 here in New York.

9 And what the purpose of the  
10 clarification order was to show you  
11 that, yes, Ukrainian courts are aware  
12 there's an arbitration here. And also  
13 that severability is not a concept that  
14 the Ukrainian courts are going to  
15 recognize.

16 Under Ukrainian law, as we said  
17 in our expert evidence, and it's  
18 buttressed by the opinion, when the  
19 agreement is found to be null and void,  
20 all legal consequences that entail from  
21 it flow, and one of them is the  
22 arbitration clause is null and void.

23 THE CHAIRMAN: Let me ask one  
24 question, Pieter. Doesn't Judge Lynch,  
25 in effect, rule -- find the opposite on

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2 both of your points?

3 MR. VAN TOL: I don't think he  
4 did, Mr. Chairman. I think he was  
5 deferring to the tribunal. What he was  
6 doing was, we were making a motion, with  
7 respect, that you had manifestly  
8 disregarded the law. And the judge made  
9 it as clear as he could that he was not  
10 substituting his finding for yours, but  
11 merely that you had a basis for your  
12 ruling. We disagree and think that  
13 there is more to be heard on that, but  
14 Judge Lynch did not say anything other  
15 than that you did not manifestly  
16 disregard the law.

17 ARBITRATOR JENTES: You said that  
18 you thought that we should adjourn until  
19 the Ukrainian proceedings runs its  
20 course. In light of the five-day  
21 limitation, what's -- what's out there  
22 to be done in the Ukraine?

23 MR. VAN TOL: That's a very good  
24 question, and I always hesitate to opine  
25 on what Ukrainian law is, but I would

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2 raised at the very outset. And the  
3 answer is that these orders, supposed  
4 orders in the Ukraine, on their face do  
5 not apply to this panel at all. And  
6 there was a representation made on the  
7 record in court by Altimo and Altimo's  
8 lawyer, who's not here today, Mr. Ron  
9 Rolfe of the Cravath firm, it appears at  
10 pages 39 and 40 of the transcript which  
11 Mr. Van Tol had forwarded to you, where  
12 he specifically represents that there's  
13 no effort to enjoin the arbitrators, and  
14 that the arbitrators are not subject to  
15 these supposed Ukrainian orders. So I  
16 think that's one issue that's off the  
17 table.

18 I think it's helpful to put this  
19 in context. We brought this case in  
20 February. And it gets plagued by an  
21 endless series of delays and there's  
22 delays of all kinds at the influence by  
23 Storm. Every time a hearing is  
24 scheduled, we get a last-minute  
25 application to delay it. Typically,

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2 imagine that Telenor Mobile could try to  
3 go to the Ukrainian court and say, I  
4 missed the deadline, but I did so with  
5 good cause. May I intervene and appeal  
6 now. I'm just saying that's what I  
7 would do if I were in their shoes.

8 But it's not as if -- well, and  
9 two things I should say, actually. As I  
10 understand that order, it was akin to a  
11 preliminary injunction to keep things in  
12 place while there is an action going on  
13 there.

14 So even if Telenor Mobile doesn't  
15 attack the preliminary injunction, it  
16 may go in and litigate the merits of the  
17 ultimate injunction there. There's an  
18 anticipated permanent injunction, much  
19 as there has been before Judge Lynch.  
20 So the action will continue beyond the  
21 preliminary injunction stage.

22 THE CHAIRMAN: Mr. Sills.

23 MR. SILLS: Thank you,  
24 Mr. Chairman. Let me begin by  
25 addressing the question that Mr. Jentes

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2 because of one of these self-generated  
3 Ukrainian litigations.

4 Now, we weren't the ones who  
5 invoked the jurisdiction of the Southern  
6 District here. After this panel denied  
7 Storm's motion to dismiss, an  
8 application was made in court to set it  
9 aside on grounds that it was a manifest  
10 disregard of the law. That generated  
11 Judge Lynch's first opinion. I don't  
12 want to take up the panel's time because  
13 that opinion speaks for itself.

14 Dissatisfied with that,  
15 apparently, they went back and sued  
16 themselves again, and it's absolutely  
17 clear that that's what's going on. The  
18 claims that these are not collusive  
19 litigations and cannot stand, and they  
20 particularly cannot stand after two  
21 orders of an exceptionally well-regarded  
22 district judge in the Southern District.  
23 He had five hearings, as he said, in  
24 this case. And what he heard on the  
25 record with a witness present, after



<p style="text-align: right;">Page 18</p> <p>1 Proceedings</p> <p>2 giving Storm the fullest possible</p> <p>3 opportunity to make its case, is that</p> <p>4 Storm was being sued by members of its</p> <p>5 own corporate family as part of a design</p> <p>6 to frustrate, hinder, and delay this</p> <p>7 arbitration.</p> <p>8 I think I should say that I do</p> <p>9 believe that making this application</p> <p>10 itself is arguably a contempt of that</p> <p>11 order. And there are further</p> <p>12 proceedings to be had before Judge</p> <p>13 Lynch.</p> <p>14 Unlike Ukrainian proceedings, we</p> <p>15 did give notice. We did serve Alpren</p> <p>16 and Altimo. They hired an eminent firm,</p> <p>17 a senior member of that firm to make</p> <p>18 their argument that they were not</p> <p>19 subject to this court's jurisdiction.</p> <p>20 He made that pitch and he lost.</p> <p>21 He has appellate rights in the</p> <p>22 Second Circuit. They're not subject to</p> <p>23 five-day limitations. We didn't get an</p> <p>24 order that binds him and tells him to</p> <p>25 come in later. There's been the fullest</p>	<p style="text-align: right;">Page 19</p> <p>1 Proceedings</p> <p>2 opportunity for due process.</p> <p>3 This arbitration, by agreement,</p> <p>4 is to be held in New York. The Southern</p> <p>5 District has accorded the seat of the</p> <p>6 arbitration. It's subject to New York</p> <p>7 law, and by agreement of the parties</p> <p>8 review or confirmation can be sought in</p> <p>9 the Southern District.</p> <p>10 So we are proceeding in</p> <p>11 accordance with the agreement between</p> <p>12 the parties. What we've been trying to</p> <p>13 do, ever since February, is get a</p> <p>14 hearing on the merits.</p> <p>15 THE CHAIRMAN: You say that, but</p> <p>16 is Pieter right when he says, Bob, that</p> <p>17 to this day you haven't appealed, you</p> <p>18 haven't appealed the Ukrainian orders?</p> <p>19 MR. SILLS: We don't because we</p> <p>20 don't believe they're proper. We</p> <p>21 believe they're a collusive and</p> <p>22 collateral attack on this tribunal's</p> <p>23 jurisdiction and on the agreed</p> <p>24 jurisdiction of the Southern District.</p> <p>25 And the fact that we've agreed on</p>
<p style="text-align: right;">Page 20</p> <p>1 Proceedings</p> <p>2 a forum, arbitration, a venue for that</p> <p>3 arbitration, New York, and a governing</p> <p>4 law for that arbitration, New York law,</p> <p>5 is enough. And the fact they choose to</p> <p>6 sue us in Ukraine or anyplace else</p> <p>7 doesn't mean that at their option they</p> <p>8 can avoid the deal the parties make.</p> <p>9 THE CHAIRMAN: So let me ask you</p> <p>10 a question. Let's say we go forward,</p> <p>11 and let's assume you prevail in Storm's</p> <p>12 absence here. Then what do you do?</p> <p>13 MR. SILLS: We're going to</p> <p>14 enforce that order.</p> <p>15 THE CHAIRMAN: In the United</p> <p>16 States?</p> <p>17 MR. SILLS: Well, I think, as</p> <p>18 Judge Lynch pointed out, there has never</p> <p>19 been a contested hearing in Ukraine on</p> <p>20 any of these issues. And once we get an</p> <p>21 order, and I think the fact that -- I</p> <p>22 don't want to get ahead of myself, but I</p> <p>23 believe we have an exceptionally strong</p> <p>24 case on the merits. If the panel does</p> <p>25 rule in our favor, and that is reduced</p>	<p style="text-align: right;">Page 21</p> <p>1 Proceedings</p> <p>2 to a judgment in the Southern District</p> <p>3 in accordance with the agreement of the</p> <p>4 parties, and we seek enforcement in the</p> <p>5 Ukraine, that's the appropriate time to</p> <p>6 invoke the jurisdiction of Ukrainian</p> <p>7 courts, not with these efforts to hinder</p> <p>8 and delay this arbitration.</p> <p>9 And whether or not on a real</p> <p>10 hearing with a real presentation of</p> <p>11 evidence and, most important, real</p> <p>12 adversaries, not parties who are all on</p> <p>13 the same side of the caption pretending</p> <p>14 to be plaintiffs and defendants, we may</p> <p>15 well get a different result.</p> <p>16 But it's also important, I think,</p> <p>17 to see that as Judge Lynch found, Storm</p> <p>18 is part of a larger corporate family.</p> <p>19 He expressly held that we had a</p> <p>20 significant likelihood sufficient for</p> <p>21 preliminary injunction to show that</p> <p>22 Altimo and Alpren are bound to this</p> <p>23 agreement as well.</p> <p>24 Altimo has significant assets</p> <p>25 outside of Russia and Ukraine. They're</p>

1 Proceedings  
2 co-headquarters are in London. They  
3 maintain significant cash and noncash  
4 assets in New York. We're confident  
5 we'll be able to enforce that order.

6 But I think, to take a step back,  
7 there's two points. We wouldn't be  
8 pursuing this and taking up the  
9 tribunal's time and our time, if we  
10 didn't think we could get an effective  
11 order in the end.

12 Sometimes there are people who  
13 hide from the process server. But in  
14 the end we think we'll be able to  
15 enforce this panel's order. But, it  
16 seems to me, more than unseemly for a  
17 party that made a deal and agreed to  
18 arbitration to raise as a defense the  
19 claim that if they lose they will simply  
20 thumb their noses at that tribunal and  
21 at any award entered upon -- I'm sorry,  
22 any judgment entered upon award in the  
23 United States. That in effect is our  
24 problem. Just as it's our problem, and  
25 I don't think any concern of Storm's,

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2 courts to interfere with this  
3 arbitration.

4 The panel heard this application  
5 in effect on December 4 when this was  
6 raised. There was an exchange of  
7 correspondence. There was, as I'm sure  
8 you recall, a lively debate in a  
9 telephone conference on this point. The  
10 panel made its ruling that we could go  
11 forth today, at long last, and hear the  
12 case on the merits.

13 This is nothing more than a  
14 last-minute, literally a last-minute,  
15 application argument. It's no more  
16 meritorious now than it was on the 4th.  
17 We're here. We're ready to go forward.  
18 It's up to Storm whether it wants to  
19 proceed or not. We welcome their  
20 participation, but it is not up to me  
21 and it's not up to the panel. If they  
22 want to go forward, as I think they  
23 should, then we ought to take a brief  
24 recess and proceed to the evidence. If  
25 they want to absent themselves for

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2 that we regard these Ukrainian orders as  
3 a nullity. We don't plan, we don't have  
4 any current plans to appear before the  
5 Ukrainian court in these collusive  
6 cases.

7 There is an injunction that  
8 specifically prohibits Storm and its  
9 corporate parents from doing anything in  
10 Ukraine to try and enforce those orders.  
11 And if they try and enforce those  
12 orders, we will have them held in  
13 contempt in New York and we will proceed  
14 against the non-Ukrainian assets.

15 I think what Judge Lynch has  
16 done, and I think it's absolutely clear  
17 from the content and tone of both his  
18 opinions, that he believes this  
19 arbitration ought to go forward; that  
20 there is no legal reason it shouldn't go  
21 forward. He's cleared the path for us,  
22 and he's given us an order that prevents  
23 the Ukrainian courts and prevents Storm  
24 and its fellow corporate family members  
25 from using and abusing the Ukrainian

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2 reasons of their own, then we're  
3 prepared to go forward in any event.

4 ARBITRATOR JENTES: I'd like to  
5 get back, I'm sorry, on a simplistic  
6 approach towards this thing. What I  
7 heard was that there is no outstanding  
8 order from any court that says that we  
9 should not proceed. I take it that  
10 Storm agrees with that? That is, the  
11 panel should not proceed?

12 MR. VAN TOL: From my reading of  
13 the December 1 ruling, I don't see any  
14 reference to any order against the  
15 tribunal members.

16 ARBITRATOR JENTES: And then on  
17 November 15 when you wrote us the letter  
18 requesting the alternative relief, is  
19 that still the relief that you're asking  
20 for us -- from us today?

21 MR. VAN TOL: I'm sorry, I am  
22 losing my dates. The November 15th was  
23 after the clarification order.

24 ARBITRATOR JENTES: What you said  
25 then was --



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2 THE CHAIRMAN: December.  
3 ARBITRATOR JENTES: No. This is  
4 November 15. That's why I want to make  
5 sure I understand what their motion is.

6 ARBITRATOR CRAIG: This is the  
7 reconsideration motion?

8 ARBITRATOR JENTES: It says,  
9 "Storm, therefore, respectfully requests  
10 that the tribunal reconsider the  
11 October 22 award and find that under  
12 New York law it must grant recognition  
13 of the Ukrainian court's order by  
14 dismissing the arbitration."

15 I only want to understand, what  
16 is the exact motion and the action that  
17 you want us to do today?

18 MR. VAN TOL: If I could just lay  
19 it out again, to make it as clear as I  
20 can. The reconsideration is of the  
21 October 22nd award in which you found  
22 jurisdiction on the narrow ground that  
23 there was a severable agreement to  
24 arbitrate.

25 ARBITRATOR JENTES: Just so

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2 reconsider what are we to do, under your  
3 motion to us today?

4 MR. VAN TOL: I think you have no  
5 jurisdiction, then.

6 ARBITRATOR JENTES: So we  
7 should --

8 MR. VAN TOL: Dismiss.

9 ARBITRATOR JENTES: We should  
10 dismiss the proceeding?

11 MR. VAN TOL: Yes.

12 THE CHAIRMAN: Or in the  
13 alternative, I take it, adjourn until  
14 the Ukrainian courts enter a final --

15 MR. VAN TOL: That's correct.  
16 And I think I heard from Mr. Sills that  
17 he's happy to go to Ukrainian courts but  
18 just not now. And I would submit there  
19 is a stark difference there when Storm,  
20 Altimo, Alpren are under the  
21 jurisdiction of a court, they appear,  
22 and fight it.

23 When Telenor Mobile is under the  
24 jurisdiction of a court and says, maybe  
25 I'll go in some other date, but first

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1 Proceedings  
2 you're clear, I didn't view it as being  
3 that narrow ground. We did find that we  
4 had jurisdiction. And we articulated  
5 the reasons, among others. But in any  
6 event, that order by -- partial award by  
7 the tribunal is out there.

8 MR. VAN TOL: Right.

9 ARBITRATOR JENTES: What do you  
10 want us to do?

11 MR. VAN TOL: I want you to  
12 reconsider that, in light of the  
13 clarification order from the Ukrainian  
14 court which made it clear that, one, the  
15 Ukrainian courts were aware of both the  
16 arbitration clause and the existence of  
17 an arbitration in New York.

18 And two, that the Ukrainian court  
19 meant to void both the shareholder's  
20 agreement itself and the  
21 shareholder's -- the agreement to  
22 arbitrate contained therein.

23 ARBITRATOR JENTES: Okay. And on  
24 those grounds you want us to reconsider  
25 the October 22 award, and then after we

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1 Proceedings  
2 let me collaterally attack it before  
3 this tribunal.

4 ARBITRATOR CRAIG: Let me ask you  
5 a question on that, Pieter. After we  
6 had issued our opinion finding  
7 jurisdiction and Storm decided it should  
8 go back to the Ukrainian court to seek  
9 clarification and maybe reasons for  
10 their opinion that would clarify for us  
11 what they were judging on, did you  
12 consider giving notice to Telenor that  
13 you were going back to seek that  
14 clarification?

15 MR. VAN TOL: We did not --

16 ARBITRATOR CRAIG: So that they  
17 could participate in the proceeding  
18 before the Ukrainian judge as to the  
19 clarification issues? And it had to do  
20 with the meaning of the Uncitral rules,  
21 in specific.

22 MR. VAN TOL: You've hit on the  
23 main point. If we had given notice to  
24 Telenor, and we did not, it would have  
25 been ineffective. That procedure under

<p style="text-align: right;">Page 30</p> <p>1 Proceedings</p> <p>2 Ukrainian law is always ex parte,</p> <p>3 always. And that's why we happily</p> <p>4 provided a copy of the questions to</p> <p>5 Mr. Sills. If Mr. Sills thought those</p> <p>6 questions were misleading in some way,</p> <p>7 Telenor could have gone in to the court</p> <p>8 and said, hang on a minute, you got it</p> <p>9 wrong. And they've done that to other</p> <p>10 appellate courts.</p> <p>11 But in answer to your question,</p> <p>12 we didn't give notice for two reasons:</p> <p>13 One, it's not required. But, more</p> <p>14 importantly, it wouldn't have done</p> <p>15 Telenor any good.</p> <p>16 ARBITRATOR JENTES: Just to be</p> <p>17 fair, on the November 15 letter you</p> <p>18 said, continuing in the next sentence,</p> <p>19 "In the alternative, Storm respectfully</p> <p>20 requests that the tribunal dismiss the</p> <p>21 arbitration on the grounds that Storm</p> <p>22 has satisfied the Sphere Drake standard</p> <p>23 by coming forward with," quote, some</p> <p>24 evidence, end of quote, "to support its</p> <p>25 position that the arbitration clause is</p>	<p style="text-align: right;">Page 31</p> <p>1 Proceedings</p> <p>2 invalid as a matter of law which means</p> <p>3 that a court must decide the contract</p> <p>4 formation issues." That's the end of</p> <p>5 the alternative.</p> <p>6 Are you still promoting that</p> <p>7 position to us today?</p> <p>8 MR. VAN TOL: That's a good</p> <p>9 question. I may have to rest on the</p> <p>10 record there because I'm worried that</p> <p>11 I'm getting too close to arguing the</p> <p>12 merits. But what we argued to Judge</p> <p>13 Lynch, that's already in the record, is</p> <p>14 that the sum evidence standard had been</p> <p>15 met, and that we're entitled to a jury</p> <p>16 trial before Judge Lynch. And we filed</p> <p>17 a jury demand just last week.</p> <p>18 So I hope that can answer your</p> <p>19 question that it's still a live issue,</p> <p>20 but I'm concerned about getting close to</p> <p>21 the merits of our application, although</p> <p>22 I understand that to be a jurisdictional</p> <p>23 question.</p> <p>24 So I think the line I need to</p> <p>25 draw is that, to the extent we're asking</p>
<p style="text-align: right;">Page 32</p> <p>1 Proceedings</p> <p>2 you to find you have no jurisdiction,</p> <p>3 that doesn't touch on the merits and we</p> <p>4 think we can, because that's in</p> <p>5 accordance with the December 1 ruling.</p> <p>6 ARBITRATOR JENTES: Okay.</p> <p>7 THE CHAIRMAN: Anybody else?</p> <p>8 Anything to add? Let's take a brief</p> <p>9 adjournment so that the panel can</p> <p>10 consult.</p> <p>11 MR. VAN TOL: Thank you.</p> <p>12 (Recess taken.)</p> <p>13 THE CHAIRMAN: All right. The</p> <p>14 tribunal has conferred. Storm's motion</p> <p>15 to reconsider our October 22, 2006 order</p> <p>16 is denied. Alternatively, Storm's</p> <p>17 motion to dismiss on the ground that</p> <p>18 Storm has satisfied the Sphere Drake</p> <p>19 standard is similarly denied. The</p> <p>20 tribunal is now ready to proceed on the</p> <p>21 merits.</p> <p>22 We invite Storm to participate</p> <p>23 fully on the merits, if it so desires.</p> <p>24 We note that there will not be -- the</p> <p>25 tribunal will not entertain a default</p>	<p style="text-align: right;">Page 33</p> <p>1 Proceedings</p> <p>2 under Article 28 of the Uncitral rules.</p> <p>3 Telenor Mobile will be required</p> <p>4 to go forward and present its case in</p> <p>5 full on the merits. It has the burden</p> <p>6 of proof in advancing its arguments.</p> <p>7 Accordingly, the tribunal will go</p> <p>8 forward with or without Storm's active</p> <p>9 participation. And we welcome any</p> <p>10 comment from the parties.</p> <p>11 MR. VAN TOL: I thank the</p> <p>12 tribunal for its consideration of our</p> <p>13 motions, and I'm going to have to stand</p> <p>14 by our earlier statement that, because</p> <p>15 of the December 1 ruling, Storm feels</p> <p>16 that its hands are tied and that it</p> <p>17 cannot go forward on the merits.</p> <p>18 With respect to the panel, we'd</p> <p>19 like to leave the proceedings and leave</p> <p>20 it at that. Rest on the papers that we</p> <p>21 have submitted.</p> <p>22 THE CHAIRMAN: Thank you.</p> <p>23 Mr. Sills, any comment to that?</p> <p>24 MR. SILLS: Just so it's clear</p> <p>25 how we intend to proceed. And we had</p>

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1 Proceedings  
2 intended to proceed exactly as you laid  
3 out, Mr. Chairman. We have two  
4 witnesses to present today. One who's  
5 physically present here in New York, one  
6 by video link to Norway. And at that  
7 point we're going to move to close the  
8 record. And I assume that without  
9 opposition that motion will be granted.

10 But I just want to make it clear  
11 that we view this as the last  
12 evidentiary hearing, after which the  
13 record will be closed, and the panel  
14 will take whatever submissions or  
15 perhaps submission it decides is  
16 appropriate and then proceed to decide  
17 the case.

18 THE CHAIRMAN: Let me ask a  
19 question of Pieter, because I just want  
20 to make sure it's clear in my mind. Are  
21 you participating on the merits, Pieter,  
22 with your written submissions on the  
23 merits, or do you take the position that  
24 both orally and in writing you offer no  
25 evidence whatsoever on the merits of the

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1 Proceedings  
2 say one thing about the state of the  
3 record. I think the tribunal is not  
4 going to be bound by Telenor's view as  
5 to whether or not the record should be  
6 closed or kept open.

7 The tribunal is, I think, capable  
8 of asking for other information, keeping  
9 the record open and asking for  
10 information, if the tribunal believes it  
11 to be so. Just because Telenor wants to  
12 close the record doesn't necessarily  
13 mean that we have to close the record.

14 MR. SILLS: Mr. Craig, I wasn't  
15 suggesting that. But it does seem to me  
16 that --

17 ARBITRATOR CRAIG: It seemed to  
18 be implied in your statement.

19 MR. SILLS: If I did, I apologize  
20 to you and to the tribunal. But,  
21 Mr. Craig, it's our view that this case,  
22 and I don't want to rehearse the history  
23 of delay that we've been plagued with,  
24 that this case was called for a hearing  
25 on the merits today. We're prepared to

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1 Proceedings  
2 underlying dispute?

3 MR. VAN TOL: Our position has to  
4 be that we've already submitted papers  
5 and those can't be undone. They're  
6 before the tribunal. What we're barred  
7 from doing by the December 1 ruling is  
8 continuing with any arguments, hearing,  
9 et cetera, on the merits, so we're not  
10 presenting any new evidence because  
11 we're barred from doing so.

12 THE CHAIRMAN: But you would ask  
13 us to consider your written submissions  
14 prior to the Ukrainian order on the  
15 merits of the dispute?

16 MR. VAN TOL: I would think under  
17 fundamental due process and the FAA you  
18 would have to.

19 ARBITRATOR JENTES: And this  
20 includes the prehearing submissions and  
21 the prehearing brief that we got on  
22 November 29th?

23 MR. VAN TOL: Correct,  
24 Mr. Jentes. Yes.

25 ARBITRATOR CRAIG: Let me just

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1 Proceedings  
2 proceed.

3 ARBITRATOR CRAIG: That's fine.

4 MR. SILLS: And, as the chairman  
5 says, Storm is invited to proceed,  
6 welcome to proceed, and decided for its  
7 own reasons, apparently, not to do so.  
8 We're prepared to rest. And once we  
9 rest, and no evidence is presented by  
10 Storm, which appears to be their intent,  
11 other than what they've already  
12 presented, then we will ask that the  
13 record will closed.

14 I must say, with all respect, it  
15 seems to me there's no -- at that point  
16 there would be no reason to hold the  
17 record open, but it's our motion and the  
18 tribunal's decision, obviously.

19 ARBITRATOR JENTES: I think the  
20 only thing that Mr. Craig's pointing to  
21 is Article 29 of the Uncitral rules is  
22 pretty clear under what circumstances  
23 you close the hearing, whether it can be  
24 reopened, what kind of evidence can be  
25 received, what the panel can request.

<p style="text-align: right;">Page 38</p> <p>1 Proceedings</p> <p>2 So I think the panel merely wants to</p> <p>3 emphasize that within the rules we may</p> <p>4 keep this thing open. There may be an</p> <p>5 application by Storm to reopen. They</p> <p>6 have to meet the extraordinary</p> <p>7 circumstances test, but in any event</p> <p>8 we'll go each step at a time.</p> <p>9 MR. SILLS: And, of course, we</p> <p>10 wouldn't dispute that. But I just -- so</p> <p>11 our position is clear, we would strongly</p> <p>12 resist any effort at gamesmanship by</p> <p>13 Storm to walk out, have us present our</p> <p>14 case, and then in effect claim that they</p> <p>15 had the right to come back and months</p> <p>16 later put on a defense case,</p> <p>17 cross-examine, in effect give themselves</p> <p>18 a rebuttal position. That's for the</p> <p>19 tribunal to decide, not for us.</p> <p>20 But I think just so Storm is</p> <p>21 making a fully informed decision before</p> <p>22 it walks out, I want to make our</p> <p>23 position clear on the record so that</p> <p>24 they don't claim that our position is</p> <p>25 somehow taken them by surprise or that</p>	<p style="text-align: right;">Page 39</p> <p>1 Proceedings</p> <p>2 we sandbagged them.</p> <p>3 MR. VAN TOL: And just for</p> <p>4 clarity, too, one thing that Mr. Sills</p> <p>5 said was he assumed we had no objection</p> <p>6 to going forward. I want to make it</p> <p>7 clear that we do, in fact, still take</p> <p>8 exception to that, and we respect the</p> <p>9 tribunal's ruling, but there is no</p> <p>10 waiver here of our rights.</p> <p>11 ARBITRATOR JENTES: Okay.</p> <p>12 THE CHAIRMAN: The tribunal will</p> <p>13 take a 10-minute recess at which time</p> <p>14 we'll proceed on the merits.</p> <p>15 MR. SILLS: Thank you,</p> <p>16 Mr. Chairman.</p> <p>17 ARBITRATOR JENTES: What is your</p> <p>18 plan at that point? Do we hear the live</p> <p>19 witness? How do we deal with the</p> <p>20 logistics of the person by phone?</p> <p>21 MR. SILLS: I think the easiest</p> <p>22 way to deal with that, subject to the</p> <p>23 tribunal's pleasure, would be to call</p> <p>24 Mr. Moland, who's here and present,</p> <p>25 ready to testify. And in the meantime</p>
<p style="text-align: right;">Page 40</p> <p>1 Proceedings</p> <p>2 we'll arrange with Mr. Lykke to make</p> <p>3 himself available by video.</p> <p>4 His wife is in the last stages of</p> <p>5 a difficult pregnancy, and we didn't</p> <p>6 want to take him away from her any</p> <p>7 longer than necessary, but we'll have</p> <p>8 him standing by. We'll proceed to</p> <p>9 examine him by video.</p> <p>10 THE CHAIRMAN: Will the video be,</p> <p>11 I take it, in another room?</p> <p>12 MR. SILLS: I believe that's</p> <p>13 right.</p> <p>14 MS. THOMPSON: 23H.</p> <p>15 MR. SILLS: But it appears we</p> <p>16 will have sufficient places at the table</p> <p>17 now. And then present whatever argument</p> <p>18 the tribunal asks for, and then we'll</p> <p>19 make our motion to close the record.</p> <p>20 THE CHAIRMAN: The tribunal will</p> <p>21 adjourn for 10 minutes.</p> <p>22 MR. SILLS: Thank you,</p> <p>23 Mr. Chairman.</p> <p>24 (Recess taken.)</p> <p>25 THE CHAIRMAN: Mr. Sills, on the</p>	<p style="text-align: right;">Page 41</p> <p>1 Proceedings</p> <p>2 record. You may proceed.</p> <p>3 MR. SILLS: Mr. Chairman, with</p> <p>4 the tribunal's permission, I would ask</p> <p>5 my colleague, Jay Musoff, to examine our</p> <p>6 first witness.</p> <p>7 MR. MUSOFF: Members of the</p> <p>8 panel, we've collected the exhibits</p> <p>9 we're going to be referring to for this</p> <p>10 witness just in one binder here. We've</p> <p>11 made copies available to you.</p> <p>12 ARBITRATOR CRAIG: Thank you.</p> <p>13 T O R S T E I N M O L A N D ,</p> <p>14 called as a witness, having been first</p> <p>15 duly sworn by the Notary Public (Amy E.</p> <p>16 Sikora), was examined and testified as</p> <p>17 follows:</p> <p>18 DIRECT EXAMINATION</p> <p>19 BY MR. MUSOFF:</p> <p>20 Q. Mr. Moland, where do you live?</p> <p>21 A. I live in Norway.</p> <p>22 Q. And what's your native language?</p> <p>23 A. Norwegian.</p> <p>24 Q. Are you comfortable testifying</p> <p>25 here today in English?</p>



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2 A. Yes, I am.

3 **Q. Can you tell us a little bit**  
4 **about your educational background, please?**

5 A. I'm an economist from the  
6 University of Oslo. I also spent one year at  
7 department of economics in MIT studying  
8 microeconomics.

9 **Q. Are you currently employed?**

10 A. Yes.

11 **Q. And who are you currently**  
12 **employed by?**

13 A. I'm currently employed by Telenor  
14 in a part-time position.

15 **Q. And before we go into your**  
16 **positions at Telenor, can you give us brief**  
17 **highlights of your work experience prior to**  
18 **joining Telenor?**

19 A. Yeah. My first 20 years after  
20 graduation was with the government. I was  
21 first about 10 years in the Ministry of  
22 Finance in Norway. Then I worked as an  
23 adviser on economic policy for Prime Minister  
24 Brundtland, first when she was in opposition,  
25 and then for almost four years in government.

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2 **responsibilities as CFO, you mentioned you**  
3 **have special responsibilities for Kyivstar.**  
4 **Can you explain what you mean by that?**

5 A. Yes. Well, when I entered  
6 Telenor and became CFO, they wanted me not  
7 only to be a CFO and look at the business  
8 from distance, they wanted me to be more  
9 directly involved in one of the most  
10 difficult operations. So I was asked to be a  
11 board member of Kyivstar since the starter in  
12 1998.

13 **Q. Now, prior to testifying here**  
14 **today, have you had an opportunity to review**  
15 **the affidavit of Egil Hansen that was**  
16 **submitted in this arbitration?**

17 A. Yes. I have.

18 **Q. And based on your personal**  
19 **knowledge, do you agree with his recollection**  
20 **of the events that he set forth in his**  
21 **affidavit?**

22 A. Yes. I agree with that, but I  
23 would -- you know, he is referring to a  
24 meeting in Moscow, an important meeting. And  
25 I remember also additional points from that

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2 **Q. And did you --**

3 A. And then after that I was -- I  
4 was CFO at Norway's major paper producer. I  
5 was Central Bank governor for two years and  
6 since '96 I have been with Telenor. From '97  
7 as CFO. And senior executive vice president.  
8 I stepped down from that position exactly one  
9 year from now. And I'm now a part-time  
10 adviser to the president of Telenor with a  
11 special emphasis on Kyivstar and Ukraine.

12 **Q. And what were your**  
13 **responsibilities as CFO at Telenor?**

14 A. Well, I believe that was the  
15 traditional CFO responsibilities as you can  
16 see them from any big American company. We  
17 are listed in -- at NASDAQ. And we, for that  
18 reason, has to follow all the regulations by  
19 SEC and Sarbanes-Oxley.

20 My more specific responsibilities  
21 was, of course, all the report, financial  
22 reporting, financial controlling, accounting,  
23 financing of Telenor, communication with our  
24 shareholders and with our creditors.

25 **Q. Now, in addition to your**

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2 meeting which is important.

3 **Q. So let me direct your attention**  
4 **to that meeting in Moscow. When was that**  
5 **meeting that you're referring to?**

6 A. That meeting was late winter or  
7 early spring 2002.

8 **Q. And who was at that meeting from**  
9 **Telenor that you remember?**

10 A. It was a meeting between --  
11 ARBITRATOR CRAIG: 2002?  
12 THE WITNESS: 2002, yes.

13 A. It was a meeting between the  
14 principals from Telenor side. Chief  
15 executive, Tormel Hermaster (ph) was there.  
16 I was there as CFO and board member of  
17 Kyivstar. The number two from Telenor Mobile  
18 was there, in addition to Egil Hansen from  
19 M & A.

20 **Q. Now, you mentioned this was a**  
21 **meeting of principals. Who was the principal**  
22 **on the other side that you were meeting with?**

23 A. That was Mikhail Fridman. He was  
24 there.

25 **Q. Who is Mikhail Fridman?**

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A. He is most senior partner of Alfa, and he was there together with Peter Aven, which was, I suppose also is, head of Alfa Bank.

ARBITRATOR CRAIG: How do you spell his last name?

THE WITNESS: A-V-O-N. I think that's right.

ARBITRATOR CRAIG: Avon.

MR. SILLS: It's actually

A-V-E-N.

THE WITNESS: E-N. Okay. Sorry.

**Q. Now, what was the purpose of that meeting in Moscow in the spring of 2002?**

A. Prior to that meeting, few months earlier, we got a message from Mikhail Fridman and Alfa that they wanted to become a shareholder in Kyivstar. We were then partners in VimpelCom, in Russia, a mobile company in Russia, and we were positive to also to bringing Alfa as a shareholder in Kyivstar.

Then shortly after -- then shortly before we had this meeting in Moscow,

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we heard that Alfa had bought about 50 percent of Storm. So that they were -- they would become a big shareholder in Kyivstar, also without Telenor's help.

And there were then discussions on the M & A expert level on Alfa buying shares from Telenor. And it turned out, then, that there were disagreements on two or three important items. So it was a need for a meeting at the top level to the companies to clarify this.

**Q. And what were the topics that were discussed at that meeting?**

A. In Egil Hansen's affidavit it's about -- it's about the possibility of an IPO of Kyivstar. That was one important point. The two other important points were what should, in the end, be the relative shareholder -- share holdings for Telenor and Alfa. And the third one, what should be the roles in the company for the two parties.

**Q. Can you tell us, what was Alfa's position on what it wanted to be in terms of its share holdings in Kyivstar?**

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A. Alfa's position was that it wanted as close to 50 percent as possible to make this more or less a 50/50 company where they -- they regarded themselves as a financial investor and regarded Telenor as the industrial partner who should be responsible for actually running the company. And assisting the company in all its operations.

Telenor's position was that, well, before -- before we sold anything to Kyivstar, we had the possibility of having close to 65 percent of the shares. But we were willing to sell some -- some shares to them to please a good partner.

**Q. And what percentage was it that Alfa wanted to obtain in terms of their share holding in Kyivstar?**

A. Yeah. They wanted to obtain 50 percent.

**Q. And if they couldn't get 50 percent was there another threshold level that that they wanted to be above?**

A. They wanted to be above

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40 percent because that gave them strong rights, according to Ukrainian legislation. And we concluded in that meeting with 56 1/2 percent to Telenor, 43 1/2 to Alfa, and a shareholder's agreement with two important contents.

One content was that the shareholder's agreement should reflect that Telenor was the operating partner of Kyivstar, so that we could support Kyivstar with all expertise and guide them on developing the operation.

The second was that we should have a shareholder's agreement that prevented Alfa from exploiting the rights according to Ukrainian law or -- and the 40 percent threshold.

**Q. Would you have sold Alfa enough shares to get their percentage over 40 percent, if they had not agreed to enter into a shareholder's agreement that stated they wouldn't use their blocking position to obstruct the operations?**

A. That's right. We would never



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2 have considered that.

3 ARBITRATOR JENTES: Might I  
4 interrupt in this regard: You have been  
5 talking entirely about Alfa.

6 THE WITNESS: Yes.

7 ARBITRATOR JENTES: Whereas, the  
8 agreements that the panel has seen talk  
9 about Storm. And we have a general idea  
10 of what Alfa's role here is, but in your  
11 words, would you explain to us what you  
12 saw Alfa's role as, who are all these  
13 other people that show up as corporate  
14 entities?

15 THE WITNESS: Yeah. At the time  
16 of the meeting in Moscow, we are talking  
17 about?

18 ARBITRATOR JENTES: yes.

19 THE WITNESS: Alfa had made an  
20 agreement with the Storm shareholders,  
21 the Storm's Ukrainian shareholders, of  
22 Alfa buying about 50 percent of the  
23 shares in Storm. And Alfa then behaved  
24 as they controlled Storm. And it turned  
25 out later that they also acquired the

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2 was he a Russian?

3 THE WITNESS: He was born, as far  
4 as I know, in Ukraine.

5 ARBITRATOR JENTES: Oh, in the  
6 Ukraine?

7 THE WITNESS: Yes.

8 ARBITRATOR JENTES: But Alfa was,  
9 as you understood it, a Russian  
10 financial company?

11 THE WITNESS: Yes. A Russian  
12 financial company involved in a lot of  
13 different businesses, among other, oil.  
14 They have big positions in the oil  
15 business.

16 ARBITRATOR JENTES: Okay.

17 ARBITRATOR CRAIG: Where is the  
18 headquarters of Alfa Bank?

19 THE WITNESS: It's in Moscow.

20 ARBITRATOR CRAIG: And the  
21 headquarters of Mikhail Fridman? Is  
22 that where he has his headquarters?

23 THE WITNESS: He's also in  
24 Moscow.

25 ARBITRATOR CRAIG: He was born in

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2 rest of the shares in Storm. So Alfa  
3 was, in effect, controlling Storm. And  
4 through different legal entities.  
5 First, I think it was through Alfa Bank.  
6 It was through Alfa Telecom. And now  
7 it's this two new -- relatively new  
8 companies, Altime and Alpren.

9 ARBITRATOR JENTES: What was your  
10 understanding of who Alfa was? In other  
11 words, these people that you were  
12 dealing with and that you had had a  
13 relationship with involving, I gather, a  
14 Russian telecom company? Who was this  
15 Alfa, as you understood it?

16 THE WITNESS: Well, as we  
17 understood it, Alfa was a company  
18 controlled by a number of partners where  
19 this Peter Aven was one, but where the  
20 most important was Mikhail Fridman. And  
21 he was one of the famous oligarchs, to  
22 put it that way. Very close  
23 relationships to the top -- to the  
24 Kremlin.

25 ARBITRATOR JENTES: And is he or

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2 Ukraine.

3 THE WITNESS: Born in Ukraine.  
4 But studied in Moscow, as far as I  
5 understand. Started his career in  
6 Moscow.

7 **Q. Now, at this meeting in Moscow**  
8 **you're referring to, do you recall any**  
9 **one-on-one meeting between Mr. Fridman and**  
10 **the CEO of Telenor?**

11 A. Yes. There was a one-on-one  
12 meeting and the four eyes between Thor  
13 Haverson and Mikhail Fridman, where, as far  
14 as I can remember, they came out and  
15 concluded on the three main topics: The IPO,  
16 the share holdings of the two parties, and  
17 the roles of Alfa as a financial investor and  
18 Telenor as an industrial investor with  
19 operations and responsibility of Kyivstar.

20 **Q. And was there an agreement to**  
21 **enter into a new shareholder's agreement**  
22 **reflecting these terms?**

23 A. Yes. After this meeting, the  
24 agreement was written down in a letter giving  
25 sort of a term sheet on the future. I think

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2 it was dated in April.

3 **Q. And is that the April term sheet**  
4 **referred to in Mr. Hansen's affidavit?**

5 A. That's right, yes. And there you  
6 will find, I think, all the -- all the  
7 substantial items, points also from related  
8 shareholders meeting.

9 ARBITRATOR CRAIG: This is  
10 Exhibit D? It's actually attached to  
11 Egil Hansen's --

12 MR. MUSOFF: We're incorporating  
13 by reference. It's the one attached to  
14 Mr. Hansen's affidavit.

15 THE WITNESS: That's right. It  
16 is. I remember that.

17 ARBITRATOR JENTES: I'm sorry,  
18 you're looking at what, Craig?

19 ARBITRATOR CRAIG: I'm looking at  
20 Egil Hansen's affidavit. And I'm going  
21 to Exhibit D, which has got an April 29  
22 letter agreement.

23 MR. MUSOFF: Yes, I believe  
24 that's the one.

25 ARBITRATOR CRAIG: Signed by --

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2 there was at that time a process between  
3 Storm's shareholders and Alfa whereby  
4 Alfa was entering into the company and  
5 was later controlling them.

6 ARBITRATOR CRAIG: But you don't  
7 know as of April 29, 2002 whether Storm  
8 was in fact controlled by Alfa?

9 THE WITNESS: Well, there was --  
10 as far as I know, there was made an  
11 agreement of -- where Alfa should take  
12 over the 50.1 percent of the shares in  
13 Storm. But whether that was actually --  
14 transaction had taken place at that  
15 time, I don't know.

16 MR. MUSOFF: Mr. Craig, while  
17 this witness may not recall the date, I  
18 believe there is record evidence that we  
19 can provide you after his testimony that  
20 shows that at that date Storm was  
21 controlled by Alfa.

22 MR. SILLS: In particular,  
23 Mr. Craig, it's referred to as a  
24 participant's agreement, a copy of which  
25 was provided to us, which does show on

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2 THE WITNESS: Yes. Exhibit D,  
3 the letter dated April 29. And it's  
4 also on the last page, accepted and  
5 agreed to by Alfa Bank.

6 ARBITRATOR CRAIG: And the term  
7 sheet is attached?

8 THE WITNESS: Yeah. And reading  
9 that, you will see that the later  
10 shareholder's agreement reflects that  
11 term sheet.

12 ARBITRATOR CRAIG: The term  
13 sheet.

14 THE WITNESS: So the point here  
15 is that -- that, you know, the basic  
16 term sheet was agreed by the two  
17 principals in a meeting and all later  
18 reflected in this.

19 ARBITRATOR CRAIG: Let me ask you  
20 about Storm. Storm is on this letter  
21 agreement. But at that time in  
22 April 2002, was Storm controlled by Alfa  
23 Bank?

24 THE WITNESS: Well, I cannot give  
25 you an exact answer to that, because

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2 its face that at the time of the deal  
3 50.1 percent of the interest in Storm  
4 was already held by Alfa, and that Alfa  
5 had special governance rights under that  
6 participant's agreement, including the  
7 right to appoint the general director,  
8 who's the sole officer and who's this  
9 fellow Nilov. It's is now Konenko.

10 But there is record evidence I  
11 believe that's annexed to Mr. Hansen's  
12 affidavit, if not to our evidentiary  
13 brief. It's referred to as  
14 participant's agreement. Maybe at a  
15 break we can supply that.

16 ARBITRATOR CRAIG: That's fine.  
17 I didn't mean to interrupt. But that  
18 was an issue that had come up.

19 THE WITNESS: And it was  
20 completely clear in all of our  
21 communications with Alfa that they  
22 regarded themselves as controlling  
23 Storm.

24 **Q. Since we have referred to**  
25 **Mr. Hansen's affidavit, if you could open it,**

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2 **just to bring out a couple of points. If you**  
3 **could turn to, I believe, page 8 of the term**  
4 **sheet, which is annex A.**  
5 A. Page?  
6 **Q. It should say 8 at the bottom.**  
7 A. 8 at the bottom.  
8 ARBITRATOR JENTES: And you're in  
9 which exhibit?  
10 MR. MUSOFF: Exhibit D to  
11 Mr. Hansen's affidavit. The one you  
12 were referring to, Mr. Craig.  
13 ARBITRATOR CRAIG: Yes.  
14 **Q. And generally, Mr. Moland, does**  
15 **the term sheet state anything with respect to**  
16 **the agreement to enter into a new**  
17 **shareholder's agreement in that term sheet?**  
18 A. Yes. In the paragraph named  
19 "shareholder's agreement." You can read the  
20 points there. All the major reality points  
21 on the -- on the -- in the shareholder's  
22 agreement with -- with Telenor appointing  
23 five directors to the board, Alfa and Storm  
24 four, adjusted pro rata to the share  
25 holdings. And it also describes the

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2 meeting.  
3 ARBITRATOR JENTES: Not at that  
4 meeting?  
5 THE WITNESS: No, no. That was a  
6 commercial meeting, not to say agreement  
7 draft meeting.  
8 ARBITRATOR JENTES: Okay. Do you  
9 know when this document that's Exhibit D  
10 was drafted?  
11 THE WITNESS: No. That was  
12 drafted shortly afterwards. And I can  
13 remember from Egil Hansen, who was the  
14 M & A person on this, that there was a  
15 discussion on governing law and on  
16 arbitration, because in the -- with the  
17 former shareholders, shareholder  
18 agreement, that was governed by Swedish  
19 law, and it was now regarded that that  
20 U.S. law was more independent by all the  
21 parties than Swedish law.  
22 ARBITRATOR JENTES: Okay. But it  
23 was your understanding that the document  
24 that's Exhibit D, the sort of expanded  
25 term sheet, was that prepared with the

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2 requirement for quorum and the procedure, if  
3 a meeting does not have quorum.  
4 **Q. And if you would, turn to the**  
5 **second-to-last page of that exhibit that's**  
6 **labeled 13 at the bottom. And what does the**  
7 **term sheet state about what the governing law**  
8 **of the shareholder's agreement is to be?**  
9 A. Yeah. It's by the laws of the  
10 State of New York, the United States.  
11 **Q. And the next paragraph, what, if**  
12 **anything, does it say about arbitration in**  
13 **the term sheet?**  
14 A. Both parties -- all -- both share  
15 purchase agreement and the shareholder's  
16 agreement will have arbitration clause  
17 providing for Uncitral arbitration, and the  
18 seat of the arbitration will be in New York  
19 City.  
20 **Q. Now, turning --**  
21 ARBITRATOR JENTES: One other  
22 question. At the time that this meeting  
23 in Moscow occurred, were there lawyers  
24 present for both sides?  
25 THE WITNESS: Not at that

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2 assistance of counsel for both the Alfa  
3 side and Telenor side?  
4 THE WITNESS: I know that we from  
5 the Telenor side had counsel. And I  
6 believe also that the other side had  
7 that.  
8 ARBITRATOR JENTES: Do you know  
9 whether the counsel for the Alfa side  
10 was the gentleman that's Mr. Wack from  
11 the Moscow -- I forgot the firm now.  
12 THE WITNESS: I cannot remember  
13 that.  
14 ARBITRATOR CRAIG: But you do  
15 recall that Alfa had counsel there?  
16 THE WITNESS: Yes.  
17 ARBITRATOR CRAIG: In this  
18 negotiation.  
19 MR. MUSOFF: Squire Sanders.  
20 **Q. I believe you said that at the**  
21 **spring 2002 meeting Mr. Fridman said he would**  
22 **like to get 50 percent of Kyivstar?**  
23 A. Yes.  
24 **Q. What is your current**  
25 **understanding of what Mr. Fridman would like**

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2 **to do with respect to Kyivstar?**

3 A. I believe that that still is  
4 his -- his ambition.

5 **Q. And what is that based on?**

6 A. Well, I can -- there was -- there  
7 was, I think last week, as a result of the  
8 injunction in Ukraine we have been talking  
9 about, there was a phone call between the  
10 prime minister of Norway and the prime  
11 minister of Ukraine. And in that meeting the  
12 prime minister of Ukraine said that he had  
13 been talking to Mikhail Fridman, who told him  
14 that he was angry with Telenor because  
15 Telenor wouldn't give him 50 percent and  
16 equal rights.

17 **Q. Even though they owned less than**  
18 **50 percent?**

19 A. Right. We heard this from the  
20 Norwegian ambassador.

21 **Q. Now, you stated that one of your**  
22 **roles is to be a board member of Kyivstar; is**  
23 **that correct?**

24 A. That's right, yes.

25 **Q. For how long have you been a**

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2 Fridman?

3 THE WITNESS: Not personally.  
4 I've only met him a few times in  
5 meetings.

6 ARBITRATOR CRAIG: But have you  
7 ever discussed with him his ambitions  
8 for Alfa Group inside of Kyivstar?

9 THE WITNESS: It was quite --  
10 quite clear in '92 that he wanted to  
11 be -- to be a 50 percent shareholder.  
12 And also that -- that Alfa's ultimate  
13 goal here was to have a merger between  
14 Kyivstar and Russian VimpelCom making  
15 Kyivstar in fact run by -- from Moscow.  
16 That was -- that was also our clear  
17 understanding.

18 ARBITRATOR CRAIG: In 1992?

19 MR. MUSOFF: I believe you said  
20 '92.

21 **Q. Did you mean 2002?**

22 A. I'm sorry.

23 ARBITRATOR CRAIG: 2002.

24 THE WITNESS: I'm sorry, 2002.  
25 I'm sorry.

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2 **board member of Kyivstar?**

3 A. I have been board member since  
4 Telenor entered into that company in the  
5 spring of '98.

6 **Q. And are you familiar with how**  
7 **board meeting for Kyivstar are called?**

8 A. Oh, yes.

9 **Q. And can you just generally**  
10 **describe your understanding?**

11 A. Well, generally, once a year we  
12 decide a schedule for board meetings for the  
13 next year. And then both administration and  
14 the shareholders, they make proposals of  
15 items on the agenda which then they -- the  
16 secretary of the board sends out a week or  
17 so -- yeah, before the meetings. In due time  
18 before the meetings, according to the  
19 statutes, I believe.

20 **Q. And it's your understanding that**  
21 **all the board members are made aware of the**  
22 **meeting dates and their locations?**

23 A. Oh, yes. Oh, yes. No doubt.

24 ARBITRATOR CRAIG: Have you  
25 yourself had conversations with Mikhail

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2 ARBITRATOR CRAIG: When was the  
3 last time you had a conversation with  
4 Mr. Fridman?

5 THE WITNESS: I think it was in  
6 that meeting.

7 **Q. Mr. Moland, turning to your role**  
8 **as a member of the board for Kyivstar, did**  
9 **there come a time when the members nominated**  
10 **by Storm stopped attending board meetings?**

11 A. Yes. That was in March 2005.

12 **Q. And let me turn your attention to**  
13 **the summer of 2004, before that time. At**  
14 **that time, what, if anything, did you hear**  
15 **about whether or not Storm would be sending**  
16 **its representatives to the board meeting?**

17 A. Yeah. I heard sometime during  
18 the summer from Igor Lytovchenko, the  
19 president of Kyivstar, that Alfa had told  
20 them that they would soon start boycotting  
21 the board meetings to prove that Telenor did  
22 not have control over the company.

23 **Q. And what, if anything, did you do**  
24 **when you heard that?**

25 A. You know, I said to Igor



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 2 Lytovchenko that I doubt they will do that,  
 3 because that would be a violation of the  
 4 shareholder's agreement. We would take them  
 5 to arbitration in New York. They would lose,  
 6 and they would prove to all the world that  
 7 they were not reliable shareholders. And I  
 8 didn't believe that Alfa would take such a  
 9 risk. So I thought it was more a reflection  
 10 of the deterioration in the relation between  
 11 the two parties that had taken place in  
 12 Russia.

13 **Q. Did you speak to anyone yourself**  
 14 **at Storm about what you had heard?**

15 A. No, I didn't do that.

16 **Q. What about at Alfa?**

17 A. No.

18 ARBITRATOR CRAIG: What was the  
 19 name of the person who was the president  
 20 of Kyivstar again?

21 THE WITNESS: Igor Lytovchenko.  
 22 I have we have the -- I can't spell the  
 23 name. I'm sorry, but I think it's in  
 24 some of the papers here.

25 MR. MUSOFF: I think it's spelled

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 2 THE WITNESS: Is today.  
 3 ARBITRATOR JENTES: And is he  
 4 Ukrainian?

5 THE WITNESS: Is native  
 6 Ukrainian.

7 ARBITRATOR JENTES: Who nominated  
 8 him to be the president?

9 THE WITNESS: I think he and a  
 10 couple of friends started the company,  
 11 must have been in '96, I believe, when  
 12 they obtained licenses for doing mobile  
 13 communication.

14 ARBITRATOR JENTES: And has  
 15 Telenor continued to support him as the  
 16 president?

17 THE WITNESS: Yes, we have.

18 ARBITRATOR JENTES: And does he  
 19 do an adequate job, as far as you're  
 20 concerned, in operating the company?

21 THE WITNESS: Well, we have  
 22 supported him with a lot of senior  
 23 persons from Telenor. So he's the chief  
 24 executive, but chief, we have during  
 25 this period, the chief technical officer

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 2 L-Y-T-O-C-H-E-N-K-O.

3 **Q. Did Mr. Lytovchenko tell you on**  
 4 **what basis he had heard that Storm and Alfa**  
 5 **was to boycott the board meetings?**

6 A. No. It was -- as I can recall  
 7 it, it was to demonstrate that Telenor did  
 8 not have -- have control over the company.

9 **Q. Did he ever mention that they**  
 10 **were taking the position that the**  
 11 **shareholder's agreement was invalid at that**  
 12 **time?**

13 A. No, no.

14 **Q. Or that the charter violated**  
 15 **Ukrainian law?**

16 A. No, no.

17 **Q. Now --**

18 ARBITRATOR JENTES: Who exactly  
 19 is Mr. Lytovchenko?

20 THE WITNESS: He is one of the  
 21 founding fathers of Kyivstar. And he  
 22 was the first president and has been  
 23 president of the company since the  
 24 start.

25 ARBITRATOR JENTES: And is today?

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 2 has been a Telenor person. The chief  
 3 marketing person, with a few exceptions,  
 4 has been a Telenor person. The chief  
 5 financial officer has been. So that we  
 6 have built around him the sufficient  
 7 expertise to run the company. But he  
 8 has been important because of his  
 9 connections in Ukraine.

10 ARBITRATOR JENTES: Are the  
 11 people that you've just mentioned that  
 12 provide the technical and management  
 13 support, are they Norwegians or are they  
 14 Ukrainians?

15 THE WITNESS: None of them are  
 16 Ukrainians. They are either Norwegians  
 17 or they are coming from other Norwegian  
 18 mobile operations in different partner  
 19 or we have hired them on an  
 20 international job market.

21 ARBITRATOR JENTES: Okay. Thank  
 22 you.

23 **Q. Now, I'd like you to turn to the**  
 24 **first exhibit in the binder. Yes. Could you**  
 25 **tell us what is there as the first exhibit?**

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A. Yeah. This is the protocol for the first meeting, board meeting, where the Alfa or Storm representatives did not attend.

**Q. And what's the date of that?**

A. That's the March 18, 2005.

**Q. And can you summarize what was the business of that meeting?**

A. Yeah. That you can see from page 2, there were the ordinary status reports on financial, technical marketing and so on. And then on the second section, item 5, is a lot of very important decision items. It goes for approval of strategy and business plan.

ARBITRATOR CRAIG: I'm sorry, I didn't understand. Where are you looking?

THE WITNESS: At Exhibit 1.

MR. MUSOFF: The second page.

ARBITRATOR CRAIG: I'm sorry, I'm there. I didn't understand what you were saying.

**Q. If you could just repeat what the important decisions were.**

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A. The important businesses in that meeting is seen from point 5 at page 2 here.

ARBITRATOR CRAIG: Right. I'm there.

THE WITNESS: And there is approval of strategy and business plan, 2005 to 2007. Approval of audited financial statement for 2004. Approval of dividends, payouts. Approval of external financing scheme for 2005. We had -- the company then had to borrow money.

And then there were approval of organization development, procurement policy. Approval of acquiring one of the smaller mobile operators. So it was -- it was very important decision items on that meeting.

**Q. And the court -- and because Storm failed to attend this board meeting, were you able to achieve a quorum?**

A. No.

**Q. And were you able to take any decisions with respect to these important**

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items?

A. No.

**Q. What, if anything, did you do when you learned that Storm was not going to attend the March 2005 board meeting?**

A. Well, according to the statutes, we follow that procedure and call for a new board meeting with the same agenda.

**Q. And was that new board meeting scheduled for April?**

A. Yes.

**Q. I'd like to now turn to the second --**

ARBITRATOR CRAIG: Can I ask you when you got notice that Storm was not going to attend this meeting?

THE WITNESS: I don't think we got notice until we were in the meeting. I cannot remember that we got it in advance. Which we -- we come to the next meeting. We got it the day before or so.

**Q. And can you tell us --**

ARBITRATOR JENTES: Why was the

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meeting held in Vienna?

THE WITNESS: Because Vienna was -- we could attend as a one-day meeting for both Telenor people going -- flying in from Oslo, from the Alfa people flying in from directly from Moscow to Vienna. And from the Kyivstar people from Kiev to Vienna. So it was for the logistic reasons a very convenient to have it there.

ARBITRATOR JENTES: All right.

THE WITNESS: So we often had board meetings in Vienna.

ARBITRATOR JENTES: Okay.

**Q. Turning to this second exhibit, what's reflected there?**

A. There is a letter from -- no. From -- Mr. Kulikov, the director general of Storm --

**Q. And --**

A. -- to us and to the chairman of the board telling that -- no. I'm sorry. Telling that Storm had a general meeting and decided that they could not attend the board



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2 meeting.

3 **Q. And what was the reason given in**  
4 **the letter, referring to the second**  
5 **paragraph?**

6 A. Well, the reason is that was  
7 impossible for them to go there. They were  
8 not given any other reason other than that.

9 **Q. And to your understanding, did**  
10 **anyone from Storm inform you or to your**  
11 **knowledge, anyone at Telenor that the reason**  
12 **they were not attending at this point was**  
13 **before the shareholder's agreement was**  
14 **invalid?**

15 A. No.

16 **Q. Turning now to Exhibit 3. Do you**  
17 **see what's --**

18 ARBITRATOR CRAIG: Can I ask a  
19 question. This may be a legal question.  
20 Did you think it was a violation of the  
21 shareholder's agreement not to attend?

22 THE WITNESS: Not to attend the  
23 March 18th meeting. But if -- and the  
24 statutes then said that, then there  
25 should be called for another meeting.

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2 **Q. And to your understanding, was**  
3 **the chairman informed about the importance of**  
4 **the items to be discussed in attending the**  
5 **board meetings?**

6 A. Oh, yes. He was.

7 ARBITRATOR CRAIG: Just a second.  
8 This April 7th letter, we don't know  
9 whether it was sent or not?

10 THE WITNESS: That's right, yes.  
11 I cannot remember. And we haven't been  
12 able to -- to find the original letter.

13 **Q. To your knowledge, was the**  
14 **important points made in this letter**  
15 **communicated to Mr. Tumanov?**

16 A. I think so. But I have no very  
17 clear recollection of that.

18 ARBITRATOR JENTES: Just so I  
19 understand, the meeting -- the document  
20 that's numbered 2 is sent by  
21 Mr. Kulikov, who didn't attend the  
22 meeting on March 18, 2005, to  
23 Mr. Tumanov, who also didn't attend the  
24 meeting; right?

25 THE WITNESS: That's right.

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2 And if they didn't attend that, we could  
3 call for a shareholders meeting or a  
4 general meeting of the company to make  
5 those decisions. And, you know, I think  
6 our counsels here could answer the legal  
7 part. But I understand that it would be  
8 a violation of the shareholder's  
9 agreement if they didn't show up at the  
10 final stage.

11 They could repair -- if it was a  
12 violation of not attending the first  
13 meeting, they could repair that by  
14 attending the second meeting or a  
15 shareholders meeting.

16 **Q. Let's now turn to the third**  
17 **exhibit. And is that a response to the**  
18 **letter at Exhibit 2?**

19 A. Yes.

20 **Q. And this appears to be a draft.**  
21 **Do you know if a final letter was ever sent?**

22 A. I don't know. I don't remember  
23 if it was sent. It was to tell the chairman  
24 about the importance of some of the items  
25 here.

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2 ARBITRATOR JENTES: And then they  
3 sent a copy of that -- well, I guess  
4 they sent it also to Mr. Ekhougen.

5 THE WITNESS: Right.

6 ARBITRATOR JENTES: Who was your  
7 representative, in effect.

8 ARBITRATOR CRAIG: And Ekhougen  
9 did attend the March 18th meeting?

10 THE WITNESS: Oh, yes. Yes, he  
11 did. They sent it to him because he was  
12 the country manager for Ukraine.

13 ARBITRATOR JENTES: Okay.

14 ARBITRATOR CRAIG: The April 7th  
15 letter, the copy that I have makes no  
16 reference to any violation of the  
17 shareholder's agreement or even of the  
18 charter. It doesn't make any allegation  
19 that there's a violation of the charter.

20 THE WITNESS: That's right, yes.

21 **Q. In that regard -- let's turn to**  
22 **Exhibit No. 5.**

23 ARBITRATOR CRAIG: There's no  
24 Exhibit 4; right?

25 MR. MUSOFF: That's correct.

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 2 ARBITRATOR CRAIG: Okay.  
 3 MR. SILLS: That exhibit  
 4 intentionally is not there.

5 ARBITRATOR CRAIG: That's it.

6 **Q. With respect to referencing the**  
 7 **shareholder's agreement, can you tell us**  
 8 **what's Exhibit No. 5?**

9 A. This is a letter, a form letter,  
 10 from Telenor Mobile to Storm, where we notify  
 11 them that they didn't attend the meetings in  
 12 March and April, and refer to the content of  
 13 the shareholder's agreement. And that this  
 14 was a breach of Storm's obligation under the  
 15 shareholder's agreement.

16 So this was the first -- first  
 17 really formal notice of our view on this.

18 ARBITRATOR CRAIG: Right.

19 **Q. Now, turning to Exhibit No. 6.**  
 20 **Are those the minutes from the April 8th**  
 21 **meeting?**

22 ARBITRATOR CRAIG: Would you just  
 23 hold on a second.

24 MR. MUSOFF: Sure. Of course.

25 ARBITRATOR CRAIG: Okay.

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 2 we have not been able to take out dividend.  
 3 And operational -- operationally, they have  
 4 also tried to prevent Kyivstar from  
 5 implementing the Sarbanes-Oxley regulations.  
 6 And also, when it comes to the direct  
 7 operations, we have not been able to  
 8 implement marketing efforts.

9 For instance, if you look at the  
 10 mobile phone, and you will see the name of  
 11 the operators on the screen as the first  
 12 thing you do. That's not the case in  
 13 Kyivstar. And we have not been able to make  
 14 them do that.

15 We have asked them to open more  
 16 sales offices, which they have not done. We  
 17 have supported Kyivstar with experts, but  
 18 have not been able to -- to be paid for that  
 19 because this is a kind of transaction that  
 20 needs board decision. So that we are not  
 21 being paid for assistance we give to  
 22 Kyivstar.

23 We have tried to -- and not been  
 24 able to strengthen the financial control to  
 25 the degree we should have wanted because

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 2 **Q. And just turning briefly to**  
 3 **Exhibit No. 6. Does that reflect the failure**  
 4 **of Storm's representative to attend the**  
 5 **April 8th board meeting?**

6 A. Yes.

7 **Q. And, again, can you summarize**  
 8 **what was the agenda for that meeting?**

9 A. Now, the agenda for that meeting  
 10 was identical to the agenda of the March 18th  
 11 meeting which we have been through.

12 **Q. How did Storm's failure to attend**  
 13 **the March 18 and April 8 board meeting affect**  
 14 **Kyivstar?**

15 A. Well, you know, not to attend  
 16 those two meetings would not have been that  
 17 important, if they then had come back to the  
 18 board later. But if you are -- are you  
 19 asking me, you know, about the whole period  
 20 where they did not attend board meetings?

21 **Q. Answer it in that respect and**  
 22 **I'll focus you again.**

23 A. It had been quite a lot of harm  
 24 to both Kyivstar and the shareholders in  
 25 different company. First, as you can see he,

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 2 there is a need for more financial  
 3 controllers in several of the departments.  
 4 And their organization doesn't take action  
 5 fast enough on this.  
 6 There is a general -- this  
 7 company has grown from being extremely small  
 8 to now having about 20 million customers.  
 9 And there is a lack of -- there is not  
 10 sufficient expertise in different areas. And  
 11 the current administration, they haven't  
 12 taken action on this sufficiently fast.

13 So the Kyivstar operation is  
 14 being suffering by this. And for the  
 15 shareholders, of course, that means that the  
 16 company could have made more money, been more  
 17 value to us. And, in addition to this,  
 18 Kyivstar has -- has now gone to have a  
 19 capital structure, which is far from optimal  
 20 from any point of view.

21 ARBITRATOR JENTES: I'm sorry, a  
 22 what?

23 THE WITNESS: Capital structure.  
 24 Because we are not able to take out  
 25 dividend. And with the present

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 2 shareholder situation, the company is --  
 3 would not be able to borrow money, if we  
 4 should try to do that. And we would not  
 5 be able to IPO the company, if that  
 6 should be the case.  
 7 ARBITRATOR CRAIG: The 20 million  
 8 subscribers, is that the current size of  
 9 Kyivstar?  
 10 THE WITNESS: Well, I don't have  
 11 the exact number, but it's above  
 12 18 million subscribers. I think we will  
 13 reach 20 million subscribers early next  
 14 year.  
 15 ARBITRATOR CRAIG: And are they  
 16 all in Ukraine?  
 17 THE WITNESS: They're all in  
 18 Ukraine. It's been a tremendous growth  
 19 in penetration, and Kyivstar has gone  
 20 from being a number five operator when  
 21 we started --  
 22 ARBITRATOR CRAIG: In Ukraine?  
 23 THE WITNESS: In Ukraine. To be  
 24 the number one now.  
 25 ARBITRATOR CRAIG: And who is

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 2 Kyivstar's major competition inside  
 3 Ukraine?  
 4 THE WITNESS: There are one major  
 5 competitor. That was the mobile branch  
 6 of the -- of the incumbent, the  
 7 Ukrainian government-owned mobile  
 8 operator, which was first partly owned  
 9 by some western European companies. Now  
 10 it's 100 percent owned by -- by a  
 11 Russian mobile operator, MTS.  
 12 ARBITRATOR CRAIG: And how many  
 13 subscribers does that company have?  
 14 THE WITNESS: They have slightly  
 15 fewer than Kyivstar. And the third one  
 16 is subsidiary of Turkcell.  
 17 ARBITRATOR CRAIG: A Turkish  
 18 company?  
 19 THE WITNESS: Yeah. It's a  
 20 Ukrainian company but partly owned by  
 21 Turks and also Russian -- Ukrainian  
 22 oligarch.  
 23 **Q. And do you know who is a partial**  
 24 **owner of Turkcell?**  
 25 A. And there we have our friends.

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 2 ARBITRATOR CRAIG: The Alfa  
 3 Group?  
 4 THE WITNESS: The Alfa Group.  
 5 **Q. In response to Mr. Craig's**  
 6 **questions, since we were talking briefly**  
 7 **about competitors of Kyivstar, is it your**  
 8 **understanding that there's a noncompet**  
 9 **clause in the shareholder's agreement?**  
 10 A. Yes.  
 11 **Q. And what's your understanding of**  
 12 **the purpose of that clause?**  
 13 A. The purpose of that is simple.  
 14 It's to make sure that the shareholders have  
 15 the same interests in developing the company  
 16 and that we do not risk that any business  
 17 secret from Kyivstar should fall into the  
 18 hands of one of the competitors.  
 19 **Q. And what sort of damage would**  
 20 **occur, if the business secrets of Kyivstar**  
 21 **would fall into any competitors hands?**  
 22 A. You know, it would be -- for  
 23 instance, planned market activities falls  
 24 into the hands of a competitor, they could  
 25 easily destroy or, you know, make actions

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 2 that could really undo a lot of what we would  
 3 else have obtained.  
 4 **Q. And Telenor, as the majority**  
 5 **shareholder of Kyivstar, would also be**  
 6 **damaged by such actions?**  
 7 A. Oh, yes. Oh, yes.  
 8 **Q. And you've mentioned to Mr. Craig**  
 9 **and the panel that Kyivstar does have a lot**  
 10 **of subscribers. You mentioned somewhere**  
 11 **close to 20 million. What is your**  
 12 **understanding if Kyivstar could have done**  
 13 **better, if it was able to have a functioning**  
 14 **board?**  
 15 A. I'm sure that Kyivstar would have  
 16 done better, if we had a functioning board  
 17 and that not only the board, but also that  
 18 Telenor would have been able to give -- give  
 19 Kyivstar more support.  
 20 THE CHAIRMAN: Do you have an  
 21 opinion as to why Storm refused to  
 22 attend and decided to boycott these  
 23 meetings?  
 24 THE WITNESS: You know, I haven't  
 25 made my thoughts to put it that way.

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2 But I don't know for sure.

3 THE CHAIRMAN: You don't know  
4 why?

5 THE WITNESS: I think it's  
6 because they want to soften us and to  
7 make us softer and go to the negotiation  
8 table and give them 50 percent of the  
9 shares.

10 THE CHAIRMAN: You don't think it  
11 has anything to do with the competition  
12 from the wholly owned Ukrainian  
13 competitor?

14 THE WITNESS: No. Well, no. I  
15 don't think that's -- I think the  
16 important motivation here is to increase  
17 the stake in Kyivstar at favorable  
18 terms. Or maybe to make us sell  
19 Kyivstar to -- to the Russian mobile  
20 operator, VimpelCom, which, of course,  
21 would be seen from Moscow would give  
22 meaning both to a Russian oligarch and  
23 to the Kremlin.

24 **Q. With respect to competition with**  
25 **Turkcell, is the damage caused by Storm's**

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2 **boycott of the board hurting Kyivstar, which**  
3 **would then benefit its competitors, including**  
4 **Turkcell?**

5 A. You know, to the extent that  
6 information goes from Kyivstar to the Turkish  
7 owned company, then it would cause damage to  
8 Kyivstar.

9 **Q. Let's go to Exhibit 8, if there**  
10 **are no further questions.**

11 ARBITRATOR CRAIG: I've got a  
12 couple. The failure of the Storm board  
13 members to attend, did that prevent the  
14 board from voting dividends?

15 THE WITNESS: Yes.

16 ARBITRATOR CRAIG: And that is  
17 because it's required to have six  
18 members of the board to approve  
19 dividends?

20 THE WITNESS: Yeah. We need to  
21 have a board meeting and we also --

22 ARBITRATOR CRAIG: You need to  
23 have a board meeting?

24 THE WITNESS: Yes. We need to  
25 have a board meeting and we need --

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2 ARBITRATOR JENTES: The real  
3 problem is you can't get a quorum, I  
4 take it.

5 THE WITNESS: Right. We don't  
6 get a quorum and they also boycotted all  
7 shareholder meetings. So the dividend  
8 should be finally decided by -- by  
9 the --

10 ARBITRATOR CRAIG: The  
11 shareholders.

12 THE WITNESS: The shareholders  
13 meeting and we have not been able to  
14 have that.

15 ARBITRATOR CRAIG: Does the  
16 failure to have a board meeting preclude  
17 Kyivstar from borrowing money?

18 THE WITNESS: We borrowed some  
19 money in the spring of '05. We had --  
20 we had a Eurobond tap issue then. And  
21 on that specific case, as far as I can  
22 remember, we had a written board  
23 resolution.

24 ARBITRATOR CRAIG: And did the  
25 members from Storm participate in that

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2 written board resolution?

3 THE WITNESS: Yes, as far as I  
4 can remember, they did.

5 ARBITRATOR CRAIG: And what was  
6 the date of that?

7 THE WITNESS: I think it was on  
8 April 8, 2005. I cannot remember the  
9 exact date.

10 THE CHAIRMAN: Wait a minute. I  
11 want to make sure I understand this.  
12 Are you saying that on that one occasion  
13 Storm did not boycott but did  
14 participate?

15 THE WITNESS: That's right, yes.

16 THE CHAIRMAN: Do we have that in  
17 the record anywhere?

18 MR. MUSOFF: We do.

19 THE CHAIRMAN: Up until today?  
20 Have we heard that before? I was  
21 laboring under the misapprehension that  
22 post initial boycott they stayed away.  
23 Am I now hearing that on at least one  
24 occasion, concerning the borrowing of  
25 the floating of a loan they actually



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2 participated?

3 MR. O'DRISCOLL: Mr. Chairman,  
4 this was right around the time the  
5 initial boycott got started.

6 THE CHAIRMAN: Is it before or  
7 after? Right around.

8 MR. SILLS: It was shortly  
9 thereafter. And I believe it's in the  
10 record. It was not a meeting. There  
11 was a signature on a unanimous written  
12 consent that allowed one round of  
13 borrowing in '05. I suppose we should  
14 clarify the record. I think the record  
15 contains it, Mr. Chairman.

16 THE CHAIRMAN: I haven't heard  
17 until just now that there was an  
18 occasion post initial boycott when  
19 Storm, to one extent or another, did  
20 participate.

21 MR. O'DRISCOLL: Mr. Chairman,  
22 just for the sake of clarity, there was  
23 one other occasion where a  
24 representative of Storm turned up at a  
25 meeting, one of the Ukrainian

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2 one.

3 ARBITRATOR CRAIG: Okay.

4 THE WITNESS: And I believe the  
5 president of Kyivstar, Igor Lytovchenko,  
6 persuaded Alfa to take -- to participate  
7 in that.

8 ARBITRATOR CRAIG: Well, do you  
9 know if there was any other attempt made  
10 by the president to secure a written  
11 ballot?

12 THE WITNESS: I think there was.  
13 I have no concrete evidence, but we were  
14 talking about him doing that a couple of  
15 times. But he failed to -- to have them  
16 agree to do that.

17 **Q. Let's turn back to May of 2005.**  
18 **And if you can look at Exhibit 8. And we'll**  
19 **come back to Exhibit 7. Just take it**  
20 **chronologically.**

21 A. This is a letter from Telenor's  
22 in-house lawyer to the chairman of Kyivstar,  
23 who then represented Storm, to tell him, you  
24 know, how serious it was that he didn't do  
25 his job. It was trying to pressure him to --

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2 representatives of Storm turned up at a  
3 physical meeting. And you may recall,  
4 it is in the record, that individual was  
5 subsequently sued by Alfa for having  
6 turned up at that meeting.

7 MR. MUSOFF: And it's in proposed  
8 or expected testimony with respect to  
9 those later meetings, which I believe  
10 took place in November of 2005, which  
11 we're going to get to chronologically.  
12 But we could turn to that.

13 ARBITRATOR JENTES: No, no.

14 ARBITRATOR CRAIG: The  
15 chronological approach I think is good,  
16 but every now and then we can pause.

17 MR. MUSOFF: Of course.

18 ARBITRATOR CRAIG: Let me ask a  
19 question about whether there were any  
20 other written ballots taken of board  
21 members on corporate business?

22 THE WITNESS: The answer is no.

23 ARBITRATOR CRAIG: This is the  
24 only one that you can recall?

25 THE WITNESS: This is the only

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2 to participate in the board meetings. We  
3 knew that he was -- well, he was one of the  
4 founding fathers of the company and had his  
5 loyalty to Kyivstar. So we hoped that, you  
6 know, putting pressure on him maybe would  
7 make him attend the board meeting so that we  
8 could have a quorum.

9 **Q. Was Telenor successful in getting**  
10 **Mr. Tumanov to attend the next board meeting?**

11 A. No. But during the conversations  
12 we had with him, he said that he would attend  
13 a board meeting where I would be elected as  
14 vice chairman, and that he also thought of  
15 stepping down as chairman. But he didn't  
16 then show up at that meeting.

17 **Q. Let me then just turn you -- I**  
18 **can perhaps summarize, sir -- we'll do these**  
19 **one at a time. It might be easier for the**  
20 **record. Exhibit 7, does that reflect the**  
21 **attendance at the May 12, 2005 board meeting?**

22 A. May 12th. Yes.

23 **Q. And was Mr. Tumanov or any of the**  
24 **other representatives of Storm present?**

25 A. No. All the Storm

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2 representatives were not present.

3 ARBITRATOR CRAIG: Referring to  
4 Exhibit 8, there are, in the first  
5 paragraph and in the third paragraph, a  
6 reference to a letter that Mr. Tumanov  
7 wrote on April 11th. And I assume that  
8 letter was in response to the letter  
9 that had been sent to him on April 12th.

10 Maybe not, no. It couldn't have been  
11 responding to -- is that letter included  
12 here somewhere, the Tumanov letter?

13 MR. MUSOFF: I believe we haven't  
14 been available to locate that letter.

15 MR. SILLS: We've searched for  
16 that letter, Mr. Craig. We've been  
17 unable to find it. I believe we also  
18 asked for a copy from Storm in our  
19 document requests, and putting to one  
20 side rather the scanty response we got  
21 in general, we didn't get a copy.

22 I mean, it seems clear from the  
23 context that the letter was sent, but we  
24 have been unable to locate a copy.

25 ARBITRATOR CRAIG: What appears

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2 is that there was a letter from  
3 Mr. Ekhougen to Tumanov on April 7th to  
4 which he responded on April 11th, and  
5 then there was an April 12th letter to  
6 Storm saying that you violated the  
7 agreement. And then a response to his  
8 letter of April 11th dated May 9th. But  
9 it's hard to figure out what Tumanov is  
10 saying about the situation, if we don't  
11 have his letter.

12 MR. SILLS: Mr. Craig, you're  
13 exactly right. We've looked for that  
14 letter. We've searched the files.  
15 We've been unable to locate one. We did  
16 demand a copy from Storm and, well, we  
17 got very few documents from Storm. And  
18 I frankly don't know.

19 It would appear that it's some  
20 sort of clerical or ministerial error  
21 that it wasn't filed properly. It seems  
22 clear from the context that it was  
23 drafted and sent, and I think we can  
24 more or less reconstruct it from the  
25 sequence of correspondence you're

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2 describing, but we just have been unable  
3 to locate a copy.

4 ARBITRATOR CRAIG: Okay.

5 **Q. Mr. Moland, let's turn to June of**  
6 **2005. I'd like to direct your attention to**  
7 **Exhibits 9, 10, and we could include 11 as**  
8 **well. If you'd briefly walk us through those**  
9 **scheduled meetings.**

10 A. The protocol No. 6 of the  
11 Ukraine -- the 15th of June meeting, there is  
12 a new agenda. This was not a repeat of the  
13 two nonattendance meetings, it was a new  
14 agenda.

15 **Q. Can you summarize what the new**  
16 **agenda was?**

17 A. Yeah. It was of the reporting  
18 and it was dividends. And, again, company  
19 policies which also were in the March and  
20 April meetings. And approval of position of  
21 the company we were talking about.

22 **Q. And then, if you can also discuss**  
23 **Exhibit No. 10, which is protocol 67, which**  
24 **appears to be on the same date?**

25 A. Yeah. This protocol No. 66, I

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2 think this is -- I'm sorry, I think this is a  
3 repeat again of the May 12th meeting. You'll  
4 see the identical agendas in those two  
5 meetings. And on Exhibit 10 we also have  
6 another board meeting, an additional board  
7 meeting on the 15th of June with agenda items  
8 that were not repeated from the May meeting.  
9 None of these meetings were attended by -- by  
10 Storm and we couldn't make any decisions. We  
11 had -- because we hadn't a quorum.

12 **Q. Now, you mentioned Mr. Tumanov**  
13 **had stated that he might attend one meeting**  
14 **in June to elect a new deputy chairman. And**  
15 **I believe you said Mr. Tumanov did not show**  
16 **up; is that correct?**

17 A. That's correct.

18 **Q. If you'd turn to Exhibit 11.**

19 A. Yes. That's the Exhibit 11 where  
20 there were two items on the agenda. It was  
21 election of a deputy chairman, and the item  
22 was a little more -- well, it was, say, about  
23 the chairman of the board where we expected  
24 Mr. Tumanov then to announce that he would  
25 step down as the chairman.



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 2 **Q. And what was the purpose of**  
 3 **trying to elect a new deputy chairman of the**  
 4 **board at the June 30, 2005 board meeting?**

5 A. It was that -- to make sure  
 6 that -- that Kyivstar had a chairman, even if  
 7 the then -- that Kyivstar had an acting  
 8 chairman, if the chairman should not attend  
 9 the meetings.

10 ARBITRATOR CRAIG: Where was  
 11 Tumanov's offices? Where was he  
 12 located?

13 THE WITNESS: He had an office in  
 14 the company in Kiev.

15 ARBITRATOR CRAIG: And these  
 16 meetings in June were in the company  
 17 headquarters; correct?

18 THE WITNESS: Yes.

19 ARBITRATOR CRAIG: They're not in  
 20 Vienna, they're in Kiev?

21 THE WITNESS: Yeah. The place of  
 22 the meeting, Kyivstar headquarters. I'm  
 23 looking at -- yeah, the 30th of  
 24 June meeting was in the headquarters.

25 ARBITRATOR JENTES: Why didn't

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 2 the two people from Telenor attend the  
 3 meeting?

4 THE WITNESS: You are now talking  
 5 about --

6 ARBITRATOR JENTES: The meeting  
 7 on June the 30th.

8 MR. MUSOFF: Referring to  
 9 Mr. Espin and Mr. Thygesen?

10 ARBITRATOR JENTES: Yes.

11 **Q. Do you know why they didn't**  
 12 **attend?**

13 A. No. I think that was for  
 14 practical purposes, we had substitutes.

15 ARBITRATOR JENTES: Well, I  
 16 notice they didn't attend the next  
 17 meeting either. And I was just  
 18 wondering why they weren't around, if  
 19 you know?

20 THE WITNESS: We had -- we had  
 21 substitutes so that if for some reason  
 22 one or two of us could not attend the  
 23 meeting, Telenor would have all the  
 24 five --

25 MR. SILLS: If you look on the

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 2 protocol, Mr. Jentes, you'll see there  
 3 were five attendees at that meeting for  
 4 Telenor. As I understand Ukrainian law,  
 5 you can appoint sort of a vice director  
 6 or a substitute who, without board  
 7 action, can show up, if the sort of  
 8 principal representative of a company is  
 9 not present. So there was a full slate  
 10 of or full component of Telenor  
 11 representatives there shown in the  
 12 protocol.

13 **Q. Mr. Moland, is that reflected in**  
 14 **the protocol, where it says Mr. Sigmund**  
 15 **Ekhougen, representing Telenor Mobile**  
 16 **Communications, substituting Mr. Paul Lien**  
 17 **Espin and the same with the substitution for**  
 18 **Mr. Thygesen. Is that what you're referring**  
 19 **to?**

20 A. Yes. That's right. Both the two  
 21 attending were substitutes to the board.

22 **Q. Do you have an understanding why**  
 23 **Mr. Tumanov failed to show up so that the**  
 24 **board could elect an acting chairman?**

25 ARBITRATOR CRAIG: That's the

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 2 June 30th.

3 **Q. At the June 30th, 2005?**

4 A. No. He had instructions from  
 5 Alfa not to be there. And I remember that we  
 6 talked to him, and he said that -- that he  
 7 was -- we talked to him and he said that he  
 8 was Alfa's representative in Ukraine and  
 9 therefore he had to follow their  
 10 instructions.

11 **Q. And Alfa had instructed him not**  
 12 **attend that board meeting?**

13 A. That's right. That's right.

14 ARBITRATOR CRAIG: Did he tell  
 15 you why?

16 THE WITNESS: No.

17 ARBITRATOR CRAIG: Did you ask  
 18 him why?

19 THE WITNESS: It was obvious  
 20 that, you know, as a part of the whole  
 21 boycott situation Alfa had instructed  
 22 all the Storm board members not to  
 23 attend any meeting. Because this  
 24 meeting would further increase, you  
 25 know, Telenor's visuality in the company

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 2 by electing me as a vice chairman.  
 3 ARBITRATOR CRAIG: I'm just  
 4 curious to know if there was any  
 5 specific articulated reason given for  
 6 the boycott that we can find in writing  
 7 or coming from some official at Storm or  
 8 from Alfa Group that we can use to try  
 9 to understand why they were doing this?

10 THE WITNESS: No. I don't think  
 11 there is any written reason for their  
 12 not attending. So it's more like we  
 13 have --

14 ARBITRATOR CRAIG: This is your  
 15 supposition?

16 THE WITNESS: Our analysis, yeah.  
 17 And during -- during the -- well,  
 18 since -- since the agreements in 2002  
 19 and up to late in 2004, there was a very  
 20 good relationship in Kyivstar, and they  
 21 attended all the meetings.

22 I don't -- well, I'm positive  
 23 we -- we didn't vote. All decisions  
 24 were unanimous. They didn't oppose to  
 25 anything. They voted in favor of

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 2 you put a date on when the boycott  
 3 began? It looks from these exhibits  
 4 like it began in March of 2005.

5 THE WITNESS: Yes, yes.

6 ARBITRATOR CRAIG: That's right?

7 THE WITNESS: Yeah. That's  
 8 right. They participated in the -- you  
 9 know, we got that warning during the  
 10 summer of 2002.

11 **Q. All right. 2004, you mean?**

12 A. 2004, sorry.

13 THE WITNESS: And then they  
 14 participated in the board meetings  
 15 during the fall of 2004. Including the  
 16 December meeting where we finally  
 17 decided to budget for 2005.

18 ARBITRATOR CRAIG: And are you  
 19 able to explain in your analysis what  
 20 the event is that triggered the boycott  
 21 that began in March of 2005?

22 THE WITNESS: You know, there is  
 23 nothing in the Kyiv -- there is no  
 24 Kyivstar thing that triggered that  
 25 boycott. You know, we had full

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 2 agreements between Telenor and Kyivstar  
 3 whereby we introduced the Telenor youth  
 4 brand in Ukraine. And on all matters  
 5 that related to Telenor's operational  
 6 influence in Kyivstar. They voted in  
 7 favor of that.

8 And on the broader level during  
 9 those two years, there were discussions  
 10 between Telenor and Alfa about doing  
 11 more together in the mobile business.  
 12 And as long as those discussions went  
 13 on, the relationship was very good. But  
 14 it was after those discussions were  
 15 terminated that there started to be  
 16 trouble both in VimpelCom in Moscow and  
 17 then in Kyivstar.

18 And we, of course, we didn't at  
 19 any point in time, so to say, get a  
 20 proposal from them of, you know, what  
 21 they wanted from us to go back to the  
 22 board. They didn't say anything about  
 23 that.

24 ARBITRATOR CRAIG: But let me get  
 25 back to that point you're making. Can

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 2 agreement on all issues in the Kyivstar  
 3 board. So, you know, it was -- it was  
 4 as a result of some -- some broader or  
 5 outside --

6 ARBITRATOR JENTES: Outside.

7 THE WITNESS: Outside Kyivstar  
 8 related issues that caused them to do  
 9 this, from my analysis.

10 **Q. What issues are you referring to  
 11 that are outside Kyivstar?**

12 A. Well, it was outside the Kyivstar  
 13 operation. It wasn't a part of Kyivstar  
 14 because in our -- according to our analysis,  
 15 what they really wanted was to have more  
 16 shares in Kyivstar and more influence. But,  
 17 you know, the trigger of this had to do with  
 18 the broader relationship.

19 **Q. And what was your understanding  
 20 of what was going on in that broader  
 21 relationship at the time?**

22 A. Now that turn out that we did not  
 23 succeed in establishing further cooperation  
 24 in the mobile area. And after that it  
 25 started in VimpelCom, where they started to

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 2 squeeze our rights, and then came here. And  
 3 in our analysis, this was attempts to make  
 4 Telenor soft and willing to go to the  
 5 negotiating table and make a deal that was  
 6 favorable to Alfa. That was our analysis.  
 7 And that was the, so to say, the business  
 8 practice these people used to do to break  
 9 them.  
 10 I can refer to a discussion, I  
 11 think it was in June, August -- or August,  
 12 between Mikhail Fridman and now the president  
 13 of Telenor, Freddie Baksaas, where Mikhail  
 14 Fridman said when there is a disagreement, we  
 15 don't seek consultants, we seek conflict. We  
 16 believe that that's the way it will turn out  
 17 to be -- we can get the best results. So  
 18 it's, so to say, part of their business  
 19 behavior.  
 20 **Q. Let's continue proceeding**  
 21 **chronologically. If I could direct your**  
 22 **attention to the next two exhibits, 12 and**  
 23 **13, relating to July 2005. Tell us, what are**  
 24 **those exhibits? And these are protocols**  
 25 **No. 69 and 70.**

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 2 were both old and new items.  
 3 **Q. Could you just highlight some of**  
 4 **the significant items on the October 22, 2005**  
 5 **board meeting agenda?**  
 6 A. In this board meeting we summed  
 7 up the most important items we had not been  
 8 able to make decisions on in the earlier  
 9 meetings. Namely, approval of financial  
 10 statements for '04, and dividends for '04,  
 11 and strategy and business plan. In addition  
 12 to that, this was also the first meeting  
 13 where we wanted a decision on the budget for  
 14 2005.  
 15 **Q. And were you able to make any of**  
 16 **those decisions at that board meeting?**  
 17 A. No. We were not. And you see  
 18 that.  
 19 ARBITRATOR CRAIG: What about  
 20 your management bonuses for 2004, did  
 21 you get that done?  
 22 THE WITNESS: No. We were not  
 23 able to make decisions on that either.  
 24 But we -- they were basically executed.  
 25 ARBITRATOR CRAIG: You just did

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 2 A. Yeah. It was another attempt to  
 3 have a board meeting.  
 4 **Q. And what were the topics on the**  
 5 **agenda for those board meetings?**  
 6 A. On the 1st of July meeting, it  
 7 was the IT strategy. It was a review of the  
 8 network operation, and it was a meeting on  
 9 the strategy of the company. And the other  
 10 meeting was about forecasts. It was more on  
 11 strategy, investment budget. Vendor  
 12 strategy.  
 13 **Q. Okay. And I take it there was no**  
 14 **quorum and the board was unable to act on any**  
 15 **of those agenda items; correct?**  
 16 A. That's right.  
 17 **Q. Let's go to Exhibit 14.**  
 18 A. Yeah.  
 19 **Q. And what's reflected there,**  
 20 **protocol No. 71?**  
 21 A. This was -- this was the board  
 22 meeting with -- with approved agenda.  
 23 **Q. Now, were there new items on this**  
 24 **agenda?**  
 25 A. Oh, yes. That were -- were --

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 2 it?  
 3 THE WITNESS: Just did it. I  
 4 think that was one of the items where  
 5 Igor Lytovchenko, the president, tried  
 6 to persuade Alfa to make a written  
 7 resolution, but they wouldn't, but it  
 8 was simply executed.  
 9 **Q. Now, before turning to the next**  
 10 **set of exhibits, are you familiar with**  
 11 **someone named Vladimir Jmak?**  
 12 **ARBITRATOR CRAIG: And**  
 13 **pronounced.**  
 14 THE WITNESS: Jmak.  
 15 A. He was also one of the founding  
 16 fathers of the company. And he was legal  
 17 adviser to the president of the company and  
 18 to the chairman.  
 19 **Q. Were you aware of any efforts**  
 20 **made to convince Mr. Jmak, as one of the**  
 21 **founding fathers, to attend board meetings?**  
 22 A. Yes. He was -- he was at that  
 23 time elected board member and as a  
 24 representative of Alfa. But his loyalty was  
 25 to the company. And he had then been looking

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 2 at what had been going on for about half a  
 3 year, and he told us that he felt no loyalty  
 4 to Alfa anymore because of what they had  
 5 done. And that he would, in spite that he  
 6 feared that Alfa would harm him later on, he  
 7 would appear at the board meeting to make it  
 8 possible to have a quorum and make important  
 9 board decisions.

10 **Q. And let's now turn to Exhibits 15**  
 11 **and 16. Those are protocols No. 72 and 73**  
 12 **from November 18, 2005.**

13 ARBITRATOR CRAIG: His name does  
 14 appear on 14 as well, as a person that's  
 15 absent.

16 THE WITNESS: Yes.

17 MR. MUSOFF: Yes.

18 ARBITRATOR CRAIG: On the  
 19 October 27 protocol?

20 THE WITNESS: Yes. He didn't --

21 MR. MUSOFF: Right. He appears  
 22 on many of the protocols as someone  
 23 absent up until now we're showing as  
 24 Exhibit 15.

25 ARBITRATOR CRAIG: Right.

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 2 in our statement of claim and in the  
 3 various litigation documents we've  
 4 supplied.

5 They sought an injunction to  
 6 prevent him from going to meetings in  
 7 the future and a declaration of  
 8 invalidity of his attendance at the  
 9 board meetings. It was another of these  
 10 lawsuits in which we didn't participate.

11 ARBITRATOR CRAIG: And what  
 12 happened in that lawsuit?

13 MR. O'DRISCOLL: Ultimately, that  
 14 lawsuit was dismissed because they  
 15 failed to follow the procedural rules in  
 16 Ukraine in bringing it.

17 ARBITRATOR CRAIG: And Telenor  
 18 itself did not appear in that lawsuit?

19 MR. O'DRISCOLL: We were not  
 20 named as a party.

21 MR. SILLS: Which is typical of  
 22 these Ukrainian lawsuits.

23 MR. O'DRISCOLL: My recollection  
 24 is Jmak defended it himself.

25 MR. SILLS: But we didn't receive

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 2 A. And the agenda there and the  
 3 protocol reflects that we were able to make  
 4 board decisions, have a quorum and make board  
 5 decisions on all those important items.

6 ARBITRATOR CRAIG: On  
 7 November 18?

8 THE WITNESS: On November 18,  
 9 yes.

10 **Q. And what is your understanding as**  
 11 **to whether Alfa took action again Mr. Jmak to**  
 12 **prevent him from attending board meetings**  
 13 **after that?**

14 A. I had the understanding that Alfa  
 15 took actions and in fact sued him.

16 ARBITRATOR CRAIG: Did you become  
 17 deputy chairman on that occasion?

18 THE WITNESS: In that meeting,  
 19 yes, I became deputy chairman.

20 MR. SILLS: Mr. Craig, I believe  
 21 the lawsuit against Mr. Jmak that Alfa  
 22 brought was actually Mr. Kulikov, who is  
 23 an Alfa functionary, who is a nominal  
 24 plaintiff, who at the time was the  
 25 general director of Storm, is referenced

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 2 notice. We weren't served with process  
 3 and we weren't named as a party.  
 4 A. On Exhibit 16, protocol No. 73,  
 5 simply reflects that we also, the same day,  
 6 approved the protocols of -- of a meeting we  
 7 had earlier in the day and made all these  
 8 decisions. So we had an approved protocol on  
 9 the same day.

10 **Q. Now, was there a meeting**  
 11 **scheduled after the November 18, 2005 board**  
 12 **meeting? Was there any meeting scheduled**  
 13 **after that?**

14 A. Well, we made a timetable or  
 15 schedule for meetings through 2006, but as  
 16 far as I can remember, there was a court  
 17 decision preventing us from having board  
 18 meetings.

19 **Q. And were any other meetings held?**

20 A. No. We tried to have -- have a  
 21 shareholder meetings, but we were not able to  
 22 have a quorum in those.

23 **Q. And with respect to the**  
 24 **shareholders meeting, directing your**  
 25 **attention to just the past few weeks, was a**



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2 **shareholders meeting scheduled for Kyivstar?**

3 A. Yes. There was a shareholder  
4 meeting scheduled shortly, a couple of weeks  
5 ago, with, as far as I remember, two items.  
6 One was to make amendments of the charter so  
7 that it would comply with the supreme court  
8 decision in the Ukraine. And the second was  
9 to elect new board members.

10 **Q. And were you able to act on those**  
11 **proposed agenda items?**

12 A. No. We didn't have a quorum.

13 **Q. Why?**

14 A. Alfa didn't participate, that's  
15 why.

16 ARBITRATOR CRAIG: Whatever  
17 happened to Mr. Jmak?

18 THE WITNESS: No. He is still  
19 there.

20 ARBITRATOR CRAIG: But he stopped  
21 coming?

22 THE WITNESS: Nobody's coming  
23 because we cannot call for a board  
24 meeting for the time being.

25 ARBITRATOR CRAIG: I see.

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2 But, for example, there was a  
3 period of time when an appellate court  
4 had overturned that. An immediate  
5 appellate court had ruled that there was  
6 no such requirement, and the boycott  
7 continued during that period as well.

8 But since the supreme court  
9 ruling on this, there haven't been any  
10 meetings. We can describe it after the  
11 witness' testimony, but there's been --  
12 there's been a further decision by an  
13 intermediate appellate court clarifying  
14 that there can be board meetings with  
15 five Telenor representatives and four  
16 Alfa representatives, but Alfa still  
17 won't show up. And their refusal to  
18 show up has persisted, despite the state  
19 of appellate decision-making in Ukraine  
20 throughout this event.

21 ARBITRATOR CRAIG: I don't want  
22 to waste your time. I'm curious. Just  
23 briefly, was this litigation initiated  
24 by Storm or Alfa Group to prevent --

25 MR. SILLS: Yes, it was. What

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2 Because there's a court order against  
3 it?

4 THE WITNESS: Court order in  
5 Kyivstar preventing us from having board  
6 meetings.

7 ARBITRATOR CRAIG: And the date  
8 of that court order is 2005 sometime?

9 MR. SILLS: It's actually got a  
10 slightly complicated procedural history,  
11 because there have been times during the  
12 relevant period when there was and times  
13 when there weren't these court orders in  
14 effect, because it's been back and forth  
15 as it's worked its way up the Ukrainian  
16 appellate ladder.

17 But I think, Mr. Craig, just for  
18 clarity, the court order to which the  
19 witness is referring is the one that was  
20 ultimately confirmed by the Supreme  
21 Court of Ukraine earlier this year which  
22 held that only shareholders could serve  
23 as directors of Kyivstar. And Alfa has  
24 taken the position that because of that  
25 there cannot be any board meetings.

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2 happened was that a lawsuit was brought  
3 in 2005, I believe, initially in a  
4 Ukrainian court of first instance in  
5 Kiev, seeking a declaration that as a  
6 matter of Ukrainian corporate law only  
7 shareholders could be directors.

8 ARBITRATOR CRAIG: And did  
9 Kyivstar resist that?

10 MR. SILLS: I suppose it depends  
11 what you mean by "resist." But, yes,  
12 they were represented. They did make an  
13 appearance. And they did succeed, I  
14 believe on the first appeal. There was  
15 trial court decision so holding. And  
16 that was overturned at the first  
17 appellate level. I believe it's called  
18 the Kyiv City Court of Appeals, which  
19 held that there was nothing wrong with  
20 the corporate governance structure of  
21 the company.

22 There was then a further appeal  
23 to what I believe is called the higher  
24 commercial court by the Alfa interests  
25 which reinstated the trial court ruling

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2 as to eligibility to serve on the board.  
3 Then that was, in turn, reversed on a  
4 hearing by the higher commercial court.  
5 And we were participating in that case.  
6 That was -- that was reversed.  
7 Then a further appeal was taken  
8 by the Alfa interests in Ukrainian  
9 Supreme Court which held, as I  
10 understand it, not on the merits, but  
11 that it had not been appropriate as a  
12 matter of Ukrainian appellate procedure  
13 for the higher commercial court to have  
14 reconsidered its own order and so left  
15 the first of the two higher commercial  
16 court orders in place. And that's now a  
17 final decision that only shareholders  
18 may serve as directors.  
19 And as you know, we've proposed,  
20 as far back as the very early stages of  
21 this dispute, a technical fix to that.  
22 We've never gotten a substantive  
23 response. We finally got one, I  
24 believe, on the 7th of this month in  
25 which -- yeah, on the 7th of November of

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2 appellate courts and secured this  
3 ruling, they've now made a proposal to  
4 us under which there would be  
5 nonshareholder members of the board.  
6 And I think it tells us a lot about both  
7 their goal and the good faith with which  
8 they've been pursuing strategy.  
9 THE CHAIRMAN: Well, they say in  
10 the spirit of compromise.  
11 MR. SILLS: Well, they do say  
12 that, Mr. Chairman. But --  
13 THE CHAIRMAN: All right. That's  
14 argument. I'm just --  
15 MR. SILLS: I understand that.  
16 But if in fact there is such a Ukrainian  
17 legal requirement, then it's very  
18 difficult to see how this would be a  
19 compromise in any meaningful sense of  
20 the word. I mean, I think what it shows  
21 is that they're prepared to turn their  
22 backs on that ruling they obtained as  
23 soon as it suits their convenience.  
24 ARBITRATOR CRAIG: Just two quick  
25 questions. It may require a brief

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2 this year, we got something in writing  
3 which I intend to hand up and make part  
4 of the record, and I suppose we ought to  
5 now, in which Storm suggested a new  
6 board structure under which they would  
7 have equal rights without increasing  
8 their share holding or paying anything  
9 for those rights.  
10 And what's particularly striking  
11 about this, aside from the fact that  
12 finally we got written confirmation that  
13 their goal was to achieve equal rights,  
14 is that they propose that there be three  
15 independent members of the board, which  
16 is striking for two reasons. One, in a  
17 company where there is only economic  
18 interest, and no public shareholders so  
19 one might ask why should there be any  
20 independent board members. What was  
21 also interesting, independent board  
22 members, by definition, would not be  
23 shareholders.  
24 So having slogged their way  
25 through the Ukrainian trial and

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2 answer.  
3 Do you remember the date that the  
4 Ukrainian court of first instance found  
5 that Ukrainian law required  
6 shareholders -- I mean, required members  
7 of the board to be shareholders?  
8 MR. SILLS: Yes. It's in the  
9 chart which appears in our statement of  
10 claim. Bear with me just a moment.  
11 THE CHAIRMAN: You can get it  
12 during the break.  
13 ARBITRATOR CRAIG: It's just a  
14 matter of historical interest to me as  
15 to when that first happened.  
16 And the second question is, did  
17 Telenor take the position that this  
18 dispute was governed by the arbitration  
19 provisions?  
20 MR. SILLS: No. Because that was  
21 purely a dispute over the charter and  
22 over these formal requirements of  
23 Ukrainian law to serve on the board.  
24 There was no mention of the  
25 shareholder's agreement there or attack



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2 on the shareholder's agreement or on the  
3 provisions of the shareholder's  
4 agreement that would require amendments  
5 to the charter to conform to the  
6 shareholder's agreement. It was purely  
7 on this formal issue of Ukrainian law.

8 So the answer is no, because we  
9 didn't view it as implicating rights  
10 under the -- under the shareholder's  
11 agreement.

12 ARBITRATOR CRAIG: And you didn't  
13 view Storm as being governed by any  
14 obligations under the arbitration  
15 provision in the shareholder's agreement  
16 reaching this kind of an issue? Of  
17 Ukrainian law?

18 MR. SILLS: Well, I think that  
19 argument, in fairness, could have been  
20 made at that point. But I suppose this  
21 goes to the waiver argument that Storm's  
22 hinted at throughout this case.

23 Any decision to participate in  
24 arbitration goes only so far as that  
25 particular -- I'm sorry, litigation goes

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2 only so far as that issue. And -- but I  
3 think in taking a step back and looking  
4 at it, because this had to do entirely  
5 with the formal requirements of  
6 Ukrainian law to serve on the board of a  
7 Ukrainian company and had nothing to do  
8 with the shareholder's agreement  
9 because, after all, the shareholder's  
10 agreement has a provision that its  
11 provisions trump any contrary provisions  
12 of the charter or Ukrainian law and  
13 obligates the shareholders to conform  
14 the charter to the governance provisions  
15 of the shareholder's agreement.

16 To the extent there were such  
17 formal requirements, the shareholder's  
18 agreement would require a fix. And  
19 that, of course, is one of the  
20 particular heads of relief we're seeking  
21 here, that is, to require Storm to  
22 consent to the amendments that are  
23 necessary to restore the governance  
24 provisions that they agreed to in the  
25 shareholder's agreement and its New York

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2 law provisions.  
3 So that, I mean, if there was a  
4 requirement that everyone had to be a  
5 Ukrainian citizen or had to wear, you  
6 know, a silly hat to the meetings or  
7 whatever it is, that Ukrainian law would  
8 impose as a formal matter, as an  
9 eligibility to serve on the board, we  
10 didn't regard that as implicating rights  
11 under the shareholder's agreement, at  
12 least to the extent -- we didn't regard  
13 that as implicating rights under the  
14 shareholder's agreement.

15 And so -- and we also regarded  
16 the shareholder's agreement as having  
17 provisions that would prevent that from  
18 affecting the ultimate governing  
19 structure of the company. So no  
20 application was made in the Ukrainian  
21 courts. We didn't choose to bring the  
22 shareholders issues before the Ukrainian  
23 courts. And I don't think -- based on  
24 advice we got from Ukrainian counsel,  
25 the Ukrainian courts wouldn't have taken

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2 cognizance of that. They would have  
3 viewed it, I think, the same way we did,  
4 as a purely formal issue arising under  
5 Ukrainian corporate law.

6 THE CHAIRMAN: Without objection,  
7 Exhibit 1 will be this letter to Sigmund  
8 Ekhougen, undated, and signed by Vadim  
9 Klymenko with a cc to Robert Sills and  
10 Alexei Reznikovich.

11 (Claimant Exhibit No. 1, letter  
12 to Sigmund Ekhougen, undated, signed by  
13 Vadim Klymenko, with cc to Robert Sills  
14 and Alexei Reznikovich, marked for  
15 identification as of this date.)

16 MR. SILLS: I should note,  
17 Mr. Chairman, that I had received an  
18 e-mail from our absent colleague  
19 objecting to this, claiming that it was  
20 a settlement document.

21 THE CHAIRMAN: So noted.

22 MR. SILLS: But I do want to make  
23 it clear on the record that he did have  
24 that objection.

25 ARBITRATOR JENTES: I gather what

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 2 we really ought to do is get back to the  
 3 chronology.  
 4 ARBITRATOR CRAIG: I'm sorry,  
 5 that's my fault.  
 6 ARBITRATOR JENTES: No, no --  
 7 ARBITRATOR CRAIG: I'm all for  
 8 chronology.  
 9 MR. SILLS: I think I have to  
 10 take more of the blame on that than the  
 11 arbitrator. Mr. Jentes, I think we're  
 12 done, unless the panel has any further  
 13 questions for the witness. But there is  
 14 a summary chronology, both of the  
 15 shareholder and the board meetings, in  
 16 the affiliated of Mr. Halverson that was  
 17 just filed with the tribunal. It  
 18 appears as Exhibit F. And it just  
 19 summarizes in tabular form the date of  
 20 each of the shareholder and board  
 21 meetings, the location of the meeting or  
 22 the proposed meeting.  
 23 And it describes -- I suppose I  
 24 should also at this time, Mr. Chairman,  
 25 move Mr. Halverson's affidavit into the

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 2 record.  
 3 THE CHAIRMAN: No objection.  
 4 (Claimant Exhibit No. F,  
 5 Halverson's affidavit, received in  
 6 evidence as of this date.)  
 7 ARBITRATOR JENTES: I think you  
 8 may be right, but I was sort of back at  
 9 16. In any event, I just wanted to get  
 10 to the end of the meetings that are  
 11 covered in the notebook, and then we've  
 12 got this sort of supplemental affidavit  
 13 regarding the December 12 meeting. And  
 14 I just would like to get through that,  
 15 only because then I have a question for  
 16 the witness.  
 17 ARBITRATOR CRAIG: We received  
 18 the Halverson affidavit in the mail from  
 19 you?  
 20 MR. O'DRISCOLL: By e-mail on  
 21 Friday evening.  
 22 ARBITRATOR CRAIG: This is part  
 23 of the recent.  
 24 MR. SILLS: Right.  
 25 **Q. Just to finish the chronology,**

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 2 **Mr. Moland, if you would turn to what's the**  
 3 **last exhibit in the binder, which I believe**  
 4 **is labeled Exhibit 18.**  
 5 ARBITRATOR CRAIG: There is no  
 6 17?  
 7 MR. MUSOFF: There is no 17,  
 8 omitted intentionally.  
 9 **Q. And could you tell us what's**  
 10 **reflected there, briefly?**  
 11 A. It's reflected that we tried to  
 12 have a board meeting this summer in July.  
 13 There was a window then where we wanted -- we  
 14 had a court decision in our favor, and we  
 15 thought that we should have a board meeting  
 16 in July. But then before we were able to  
 17 have that meeting there was a new court  
 18 ruling saying that we -- implying that we  
 19 couldn't have it.  
 20 **Q. And was that meeting ever held?**  
 21 A. No.  
 22 THE CHAIRMAN: Any further  
 23 questions? Tribunal?  
 24 ARBITRATOR JENTES: Yes. So then  
 25 after the summer failure of the board,

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 2 there was this effort to have an  
 3 extraordinary shareholders meeting, is  
 4 that correct, that's reflected in  
 5 Halverson's affidavit?  
 6 THE WITNESS: Yes.  
 7 ARBITRATOR JENTES: And that,  
 8 too, was blocked so that you could not  
 9 proceed with that either?  
 10 THE WITNESS: That's right. Yes.  
 11 ARBITRATOR JENTES: All right.  
 12 Do I understand that what exactly is  
 13 your role as -- on the board today?  
 14 THE WITNESS: No. I am still  
 15 elected board member and elected vice  
 16 chairman of the board.  
 17 ARBITRATOR JENTES: Okay. Could  
 18 you just state generally what you see as  
 19 the problem in running Kyivstar as a  
 20 result of the actions that have been  
 21 taken by Alfa and Storm by not  
 22 participating in the board meetings and  
 23 not permitting a shareholders meeting?  
 24 THE WITNESS: I think I touched  
 25 upon it.

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2 ARBITRATOR JENTES: A little bit.  
3 I'd like to have you just summarize it.

4 THE WITNESS: I can try to  
5 summarize it. We are not able to have  
6 decisions on dividend. And there is  
7 also a lot of other more specific things  
8 of the operation of the company.

9 Telenor cannot be paid for the  
10 support we give the company in terms of  
11 technical expertise, marketing expertise  
12 and so on. There is a lack of speed in  
13 the company when it comes to hiring  
14 high-quality people. In particular,  
15 when it comes to financial controlling.

16 On the marketing side, they are  
17 not -- we are not able to have them --  
18 make them do what we believe they should  
19 do to speed up the customer uptake  
20 further in terms of having more shops,  
21 branding the mobile phone, and so on.

22 And there is a more general  
23 point. Namely, that the employees of  
24 the company, they are, as a result of  
25 this, questioning to whom should we have

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2 our loyalty. So there is a lack of --  
3 of, so to say, there is a big  
4 uncertainty as to who is the future  
5 owner of the company. And that makes it  
6 difficult to have the right authority to  
7 make them do the right things to -- to  
8 expand the business.

9 ARBITRATOR JENTES: I notice that  
10 some of the meetings that couldn't be  
11 held of the board you had to approve the  
12 audited financial statements. Does this  
13 mean that there is no board approval of  
14 audited financial statements?

15 THE WITNESS: There is -- there  
16 is -- we did that in the meeting in  
17 November '05 where Jmak participated.

18 ARBITRATOR JENTES: November  
19 window?

20 **Q. November '05, you're referring**  
21 **to?**

22 THE WITNESS: November of '05  
23 where Mr. Jmak was attending.

24 ARBITRATOR JENTES: But since  
25 that time you've been unable to get

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2 board approval of financial statements?

3 THE WITNESS: That's right, yes.

4 ARBITRATOR JENTES: What do you  
5 do? Do you issue financial statements  
6 or what happens?

7 THE WITNESS: No, we issue  
8 financial statements as a part of  
9 Telenor financial statements. Kyivstar  
10 is consolidated into Telenor's financial  
11 statements.

12 ARBITRATOR JENTES: But Kyivstar  
13 itself cannot issue financial  
14 statements?

15 THE WITNESS: They cannot issue  
16 financial statements approved by a  
17 general meeting.

18 ARBITRATOR JENTES: There was  
19 also an indication that there was to be  
20 an approval of a strategy and a business  
21 plan for 2006 through 2008. So I take  
22 it there's no strategic plan that's  
23 approved by the board?

24 THE WITNESS: Well, it was --  
25 again, it was approved in that --

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2 ARBITRATOR JENTES: I see, in  
3 that window.

4 THE WITNESS: -- that window.

5 ARBITRATOR JENTES: But that's a  
6 year old?

7 THE WITNESS: That's more than a  
8 year old.

9 ARBITRATOR JENTES: There was  
10 also an indication there was going to be  
11 an approval of the budget for 2006.

12 ARBITRATOR CRAIG: Which one are  
13 you looking at, Bill?

14 ARBITRATOR JENTES: I'm looking  
15 at No. 14, the second page. The  
16 approval of the budget for 2006 and the  
17 external financing for 2005 and 2006. I  
18 take it that was approved at this window  
19 meeting, but do you have approval of the  
20 a budget for 2007?

21 THE WITNESS: No.

22 ARBITRATOR JENTES: And no  
23 external financing plan approved for  
24 2007?

25 THE WITNESS: No, no.

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2 ARBITRATOR JENTES: What about  
3 the labor contract, is that also not  
4 approved or it has been approved?

5 THE WITNESS: That has created a  
6 lot of problems. Because the expat  
7 contracts, the non-Ukrainian part of  
8 management, their appointment and  
9 contract should be also approved by the  
10 board. And impact also the shareholders  
11 meeting.

12 BY MR. MUSOFF:

13 **Q. I think following up or**  
14 **Mr. Jentes' question, what is your**  
15 **understanding of whether Telenor is able to**  
16 **consolidate the finance with Kyivstar?**

17 A. We're able to consolidate.

18 **Q. What is your understanding as to**  
19 **whether there's been a challenge to that by**  
20 **Storm?**

21 A. Yes. There has been an attempt  
22 where they have argued that we have not -- we  
23 are not able to consolidate things.

24 **Q. And you also mentioned earlier, I**  
25 **believe, about the capital structure of**

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2 **Kyivstar. Can you explain a little bit more**  
3 **about the issues you see with the capital**  
4 **structure of Kyivstar going forward?**

5 A. Yes. While the problem back in  
6 2002 was that the company needed money to  
7 expand the business. Now, going forward, the  
8 company has been a money machine. They are  
9 making a lot of money. And they have to have  
10 the money in Ukrainian banks. So we believe  
11 that there is a huge financial risk attached  
12 to this. And the natural thing -- thing  
13 would have been that the owners should have  
14 taken the money and given them back to the  
15 shareholders. So we have -- we have a  
16 capital structure that is not good.

17 ARBITRATOR JENTES: If I may, let  
18 me continue, just because I want pursue  
19 this a little bit further.

20 In terms of complying with United  
21 States laws, particularly those relating  
22 to the Securities and Exchange  
23 Commission, are there impediments to  
24 doing that, as a result of this current  
25 blockage by the Storm and the Alfa

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2 people?

3 THE WITNESS: Yes.

4 ARBITRATOR JENTES: Would you  
5 explain what that is?

6 THE WITNESS: I can explain that.  
7 I will mention two things. One is that  
8 Alfa has made an attempt to stop  
9 Kyivstar from implementing these  
10 procedures set by the American  
11 authorities.

12 The second is that when this has  
13 been done, to make Kyivstar do all the  
14 hard work that it is to implement this  
15 new routines has proved to be very  
16 difficult. Telenor has to a great  
17 extent had to pay consultants for doing  
18 this. And I'm not sure that Telenor is  
19 going to comply fully with -- with  
20 requirements set by American  
21 authorities, as a result of this -- this  
22 problems in Kyivstar. Of course, that  
23 could also harm Telenor's shareholders.

24 ARBITRATOR JENTES: Right. And  
25 you're listed in the United States?

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2 THE WITNESS: Yes.

3 ARBITRATOR JENTES: And what's  
4 the listing?

5 THE WITNESS: It's on NASDAQ.

6 ARBITRATOR JENTES: This is who's  
7 listing?

8 THE WITNESS: Telenor ASA. ASA.

9 ARBITRATOR CRAIG: This is  
10 Telenor that's being listed, not  
11 Kyivstar.

12 ARBITRATOR JENTES: I know that.  
13 I just want to have him state on the  
14 record what it is. So it's Telenor ASA.

15 And what problems do you see that  
16 the whole situation with Kyivstar and  
17 Storm, et cetera, has for Telenor with  
18 NASDAQ?

19 THE WITNESS: Well, it's not  
20 problems with NASDAQ. It's within the  
21 SEC.

22 ARBITRATOR JENTES: Okay.

23 THE WITNESS: If it turns out  
24 that -- that Kyivstar should not be able  
25 to fulfill all the requirements from



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1 Moland - Direct  
2 SEC, Telenor would have to say to -- to  
3 say to the -- to the SEC that we are not  
4 able to do that.  
5 ARBITRATOR JENTES: Okay. And  
6 that, in turn, would have impacts on  
7 your NASDAQ listing?  
8 THE WITNESS: Yeah. On the share  
9 price, yeah.  
10 ARBITRATOR CRAIG: But when we  
11 talk about SEC requirements, are we  
12 talking about Sarbanes-Oxley  
13 specifically?  
14 THE WITNESS: Yes, it is  
15 Sarbanes-Oxley. That's the part of it  
16 that's difficult when it comes to --  
17 to -- to have financial control over it  
18 and internal control over everything.  
19 ARBITRATOR CRAIG: Right.  
20 THE WITNESS: To do -- to do all  
21 the work that this requires is very  
22 difficult in Kyivstar because of the  
23 present situation. And for Telenor it's  
24 a goal to be -- to be among, so to say,  
25 the top ranking list of companies. And

1 Moland - Direct  
2 fulfill all requirements. If Kyivstar  
3 should be the thing that -- that makes  
4 Telenor not able to fulfill it, it would  
5 be important.  
6 ARBITRATOR CRAIG: Does Telenor  
7 have operations in other countries?  
8 THE WITNESS: Oh, yes. Many  
9 countries.  
10 ARBITRATOR CRAIG: Are there any  
11 other countries that you're having  
12 difficulty implementing Sarbanes-Oxley?  
13 THE WITNESS: I think it's fair  
14 to say that Kyivstar is the country  
15 where it is most difficult to do it.  
16 ARBITRATOR CRAIG: Well, my  
17 question is, are there other countries,  
18 though, where you've had difficulty?  
19 THE WITNESS: Well, we have  
20 difficult, yes, but they are much easier  
21 to -- to solve.  
22 ARBITRATOR JENTES: To deal with?  
23 THE WITNESS: To deal with than  
24 in Kyivstar. I think it's difficult  
25 also in Norway.

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1 Moland - Direct  
2 THE CHAIRMAN: You mean the  
3 United States instead of Kyivstar? You  
4 mean the United States? It's difficult  
5 to deal with the regulatory --  
6 THE WITNESS: No, no. It's  
7 difficult to have Kyivstar implementing  
8 the American rules.  
9 ARBITRATOR CRAIG: Some would say  
10 it's difficult here, too.  
11 THE CHAIRMAN: Any other  
12 questions?  
13 MR. SILLS: Yes. I just want to  
14 follow up on that line of questioning,  
15 on the consolidation issue.  
16 DIRECT EXAMINATION  
17 BY MR. SILLS:  
18 **Q. Do you know whether or not Alfa**  
19 **has attacked the right of Telenor to**  
20 **consolidate Kyivstar's results on its books?**  
21 A. Yes. I know they have tried to  
22 do that.  
23 **Q. And do you know whether or not**  
24 **they've communicated directly with Telenor's**  
25 **outside auditors raising this question?**

1 **Moland - Direct**  
2 A. I think they have, yes.  
3 **Q. And have they also written to the**  
4 **Telenor board of directors?**  
5 A. Yes. That's right.  
6 **Q. And have they issued press**  
7 **releases challenging Telenor's right to**  
8 **consolidate?**  
9 A. That's right.  
10 **Q. Can you think of any legitimate**  
11 **business reason Alfa would have to be**  
12 **interested in Telenor's accounting practices?**  
13 A. No. It's part of the same game  
14 they are seeking.  
15 THE CHAIRMAN: Okay. One final  
16 question. Did you say, I believe an  
17 hour ago or more, that this dispute has  
18 risen to the level of the prime  
19 ministers of Norway and the Ukraine  
20 discussing this dispute among  
21 themselves?  
22 THE WITNESS: No. Not this  
23 dispute. But the court order in Ukraine  
24 saying that Telenor is forbidden from --  
25 from coming here and using this panel.



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1 Moland - Direct  
2 That's a thing that is a potential  
3 threat both to Norwegian citizens,  
4 Telenor employees in the Ukraine, and  
5 also to Telenor's values.  
6 THE CHAIRMAN: And the prime  
7 ministers have discussed this?  
8 THE WITNESS: Yes. The Norwegian  
9 prime minister has brought -- brought  
10 Ukraine prime minister's attention to  
11 this.  
12 THE CHAIRMAN: Thank you very  
13 much. Thank you for coming here today.  
14 THE WITNESS: Thank you.  
15 THE CHAIRMAN: Thank you.  
16 Mr. Sills, we're going to  
17 obviously take a break. What is your  
18 pleasure now in -- plus our reporter  
19 also would appreciate a break. But what  
20 is your pleasure now? Is your witness  
21 available?  
22 MR. O'DRISCOLL: Chairman  
23 Feinberg, we've lost our window with our  
24 witness, and he is now not available  
25 until two o'clock our time, I'm afraid.

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1 Moland - Direct  
2 ARBITRATOR JENTES: I was only  
3 going to ask, are there any other things  
4 that we could in effect advance, like  
5 our logistical aspects of winding up  
6 this thing. So in other words, we could  
7 do something from one to two or  
8 something, I don't know.  
9 MR. SILLS: That's a very good  
10 suggestion. I suppose, in terms of  
11 identifying and moving in exhibits. But  
12 I'm not sure we really need to go to  
13 that formal extent.  
14 ARBITRATOR JENTES: Well, if I  
15 could on that, and perhaps we could go  
16 off the record. Off the record.  
17 (Discussion off the record.)  
18 (Luncheon recess: 12:31 p.m.)  
19  
20  
21  
22  
23  
24  
25

1 Moland - Direct  
2 ARBITRATOR JENTES: Chicago? I  
3 mean, New York time.  
4 MR. O'DRISCOLL: Because his wife  
5 is --  
6 ARBITRATOR JENTES: No, no.  
7 MR. O'DRISCOLL: It will be  
8 eight o'clock Oslo time. He had to go  
9 home and take care of his small  
10 children. And once his children are in  
11 bed --  
12 ARBITRATOR CRAIG: The absolute  
13 proper priority.  
14 THE CHAIRMAN: So he'll be ready  
15 at two. Do you have an estimate,  
16 Mr. Sills, as how long this testimony  
17 would take?  
18 MR. SILLS: I think it will be  
19 much briefer. I would think in the  
20 range of half an hour, subject to  
21 whatever questions.  
22 He's available for as long as the  
23 panel has questions for him. But I  
24 would think his direct testimony would  
25 take a half an hour or less.

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1 Moland - Direct  
2 A F T E R N O O N S E S S I O N  
3 (1:27 p.m.)  
4 THE CHAIRMAN: On the record.  
5 Mr. Sills, the tribunal has  
6 consulted during the lunch break and  
7 we're of the view that the tribunal  
8 would benefit from a post-hearing brief,  
9 particularly conclusions of fact and  
10 law.  
11 We know that the Storm written  
12 submissions over the past few months  
13 provide substantial information on both  
14 Storm's approach to findings of fact and  
15 conclusions of law. And that source,  
16 coupled with your own submissions,  
17 should hopefully ease somewhat the  
18 difficulty in your getting us such  
19 findings of fact, conclusions of law,  
20 and written argument.  
21 We also would welcome similar  
22 submissions from Storm by an order that  
23 we will issue. We welcome any thoughts  
24 you have on that. Those -- those  
25 submissions might also include as an

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1 Proceedings  
2 appendix a listing of the various  
3 submissions in writing and orders of  
4 various courts, both Ukrainian and the  
5 United States, that would help us in our  
6 deliberations.

7 We're open, understanding full  
8 well the nature of the season and the  
9 timing of all this, we're open to  
10 suggestions from claimant on when you  
11 could provide us this omnibus document.

12 And then we ask the claimant,  
13 pursuant to the Uncitral rules, once the  
14 date for your submission is reached, for  
15 your submitting these post-hearing  
16 information, am I correct, how long do  
17 we have under the Uncitral rules? It's  
18 a question, you don't have to answer  
19 now. We'll also inquire as to how long  
20 we have for the circulation of our  
21 opinion. Under -- Mr. Jentes suggested,  
22 that under the AAA rules it would be 30  
23 days but we're not sure under the  
24 Uncitral.

25 MR. SILLS: I believe it's the

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1 Proceedings  
2 same. We do have a copy of the rules  
3 with us.

4 THE CHAIRMAN: But that's sort of  
5 our opening approach to this, following  
6 our adjournment today. And we invite a  
7 response from you.

8 MR. SILLS: Well, I think that --  
9 I think that makes a lot of sense, and  
10 it will provide for an orderly pulling  
11 together of this rather extensive  
12 record.

13 It will give Storm an opportunity  
14 to reconsider its position not to  
15 participate. We would strongly oppose  
16 any effort to reopen the evidentiary  
17 hearings. But we would certainly not  
18 oppose, I don't think we could oppose,  
19 any decision by Storm to return to the  
20 table and put in its papers.

21 The one question is if Storm does  
22 return to the proceeding, it might be  
23 appropriate to leave an opportunity open  
24 for responding papers, but I really  
25 leave that to the tribunal. Obviously,

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1 Proceedings  
2 if we continue to be the only party  
3 actually participating, there obviously  
4 would be no occasion for a second round  
5 briefing, and perhaps it makes sense to  
6 see what, if anything, Storm submits and  
7 address that question at that time.

8 THE CHAIRMAN: Maybe. I'm  
9 inclined, speaking for myself, that the  
10 panel would fix a date for the  
11 simultaneous submission of post-trial --  
12 post-hearing briefs and findings of fact  
13 and conclusions of law. I wouldn't  
14 personally see a need for responses.

15 MR. SILLS: Then I won't press  
16 that any further. As far as timing  
17 goes, you're exactly right. With the  
18 time of year, and I have to say the same  
19 team that's been working with me here  
20 has been working on the VimpelCom  
21 dispute, which also involves a  
22 shareholder's agreement, and as well as  
23 on the proceeding before Judge Lynch,  
24 and I think -- I'd at least like not to  
25 work them weekends.

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1 Proceedings  
2 I would think, Mr. Chairman,  
3 subject to the tribunal's pleasure,  
4 sometime in the middle of January would  
5 make a sensible time for that  
6 submission.

7 THE CHAIRMAN: What is the Friday  
8 in the middle of January, if somebody  
9 has a calendar?

10 MR. SILLS: Could we make it  
11 Friday, the 19th?

12 THE CHAIRMAN: Friday, the 19th  
13 of January, by that date, that's the  
14 deadline, and we'll issue -- the  
15 tribunal will issue an order to that  
16 effect to both you and Storm. But  
17 Friday the 19th would be the deadline.

18 MR. SILLS: Okay. And would you  
19 like us -- we had discussed before the  
20 break providing a formal summary of the  
21 matters in evidence, both documentary  
22 and testimonial, so that it's clear what  
23 the evidentiary record is. Would you  
24 like that submitted at the same time or  
25 in advance?

<p style="text-align: right;">Page 150</p> <p>1 Proceedings</p> <p>2 THE CHAIRMAN: Could be the same</p> <p>3 time.</p> <p>4 MR. SILLS: Okay. We'll make</p> <p>5 sure to include that as well. And would</p> <p>6 you like it in the form of proposed</p> <p>7 findings and conclusions with numbered</p> <p>8 paragraphs and then any supporting</p> <p>9 argument in those proposed findings and</p> <p>10 conclusions?</p> <p>11 THE CHAIRMAN: That's fine.</p> <p>12 MR. SILLS: Without a separate</p> <p>13 brief?</p> <p>14 THE CHAIRMAN: Yes.</p> <p>15 MR. SILLS: Okay. We'll follow</p> <p>16 the form we did on the jurisdictional</p> <p>17 issue.</p> <p>18 THE CHAIRMAN: Fine.</p> <p>19 MR. SILLS: We'll certainly do</p> <p>20 that. And I think we'll be easily able</p> <p>21 to meet that schedule.</p> <p>22 THE CHAIRMAN: And then,</p> <p>23 depending on our interpretation of the</p> <p>24 Uncitral rules, we would then issue our</p> <p>25 order within the time frame allotted.</p>	<p style="text-align: right;">Page 151</p> <p>1 Proceedings</p> <p>2 MR. SILLS: Article 36 -- I'm</p> <p>3 sorry, no. No.</p> <p>4 ARBITRATOR CRAIG: I don't think</p> <p>5 there's any obligation that we have to</p> <p>6 issue an award within a specific period</p> <p>7 of time.</p> <p>8 After we issue an award, there</p> <p>9 are deadlines that might be complied</p> <p>10 with for correction or for additions,</p> <p>11 corrections, interpretations. But I</p> <p>12 don't see any comparable deadline of the</p> <p>13 AAA on this.</p> <p>14 ARBITRATOR JENTES: Well, I think</p> <p>15 what it says in Article 32-7, "The</p> <p>16 tribunal shall comply with this</p> <p>17 requirement for the period of time</p> <p>18 required by the law." So I think we're</p> <p>19 going to have to be guided, I suspect,</p> <p>20 by New York law as to when the time for</p> <p>21 the award is out.</p> <p>22 MR. SILLS: I believe that's</p> <p>23 right, but, I mean --</p> <p>24 ARBITRATOR CRAIG: I think</p> <p>25 that's -- Bill, that's after we've</p>
<p style="text-align: right;">Page 152</p> <p>1 Proceedings</p> <p>2 issued the award for it to be filed and</p> <p>3 registered. After we issue the award,</p> <p>4 it must be filed and registered within</p> <p>5 the terms of the --</p> <p>6 ARBITRATOR JENTES: You may be</p> <p>7 right.</p> <p>8 ARBITRATOR CRAIG: I don't think</p> <p>9 we're held to issue an award with any --</p> <p>10 within any period of time.</p> <p>11 MR. SILLS: I think that's right.</p> <p>12 And our interest is in getting a sound</p> <p>13 and correct award, not getting an award</p> <p>14 within some particular fixed period.</p> <p>15 That being said, for obvious reasons, we</p> <p>16 have an interest in a prompt award so</p> <p>17 that we can right the ship. But --</p> <p>18 ARBITRATOR CRAIG: Is that write</p> <p>19 the check?</p> <p>20 MR. SILLS: No. To right the</p> <p>21 ship.</p> <p>22 THE CHAIRMAN: Right the ship.</p> <p>23 ARBITRATOR CRAIG: I'm sorry, I</p> <p>24 misheard.</p> <p>25 MR. SILLS: Subject to, and I've</p>	<p style="text-align: right;">Page 153</p> <p>1 Proceedings</p> <p>2 asked one of my colleagues to go and get</p> <p>3 us a copy of the CPLR, so we can see if</p> <p>4 there is anything particular. Nothing</p> <p>5 comes to mind in terms of a specific,</p> <p>6 you know, so-many-days deadline for an</p> <p>7 award. And I have every confidence that</p> <p>8 the panel will deal with it as promptly</p> <p>9 as it can.</p> <p>10 But, as I say, I mean, our</p> <p>11 interest is in getting a sound award</p> <p>12 that will withstand any judicial</p> <p>13 scrutiny as opposed to getting one on</p> <p>14 day one as opposed to day two.</p> <p>15 THE CHAIRMAN: All right.</p> <p>16 Anything else from the tribunal? If</p> <p>17 not, do we have anything else before our</p> <p>18 conversation with your next witness?</p> <p>19 MR. O'DRISCOLL: They should be</p> <p>20 there momentarily. Let me just call.</p> <p>21 ARBITRATOR CRAIG: Mr. Sills, on</p> <p>22 the issue of the Storm contribution to</p> <p>23 this, in their prehearing brief which</p> <p>24 they filed, I guess, some weeks ago,</p> <p>25 they have a collection of proposed</p>

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1 Proceedings  
2 findings of fact that are also -- have  
3 paragraphs that are numbered. So in  
4 designing your own proposed findings of  
5 fact, you want to take into account,  
6 because I think the tribunal is going to  
7 be using the Storm prehearing brief for  
8 Storm's version of this.

9 MR. SILLS: I would assume so. I  
10 mean, since I don't think they've  
11 characterized the issues correctly,  
12 we're not planning to respond to it as  
13 if it were a pleading point by point.

14 But as I'm sure you recall, on  
15 the previous -- on the proceedings  
16 leading up to the partial final award,  
17 the panel asked for the submission of  
18 proposed findings and conclusions, and  
19 we did that, and that's in numbered  
20 paragraphs. We treated it as if they  
21 were proposed findings and conclusions  
22 in federal court.

23 I mean, I have said, I think,  
24 their brief is more just a brief with  
25 each paragraph having a number. But

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1 Proceedings  
2 that we would have exercised our right  
3 to cross-examine them. And that their  
4 testimony, such as it is, is now simply  
5 in the form of affidavits drafted by  
6 their attorneys.

7 ARBITRATOR JENTES: Let me add  
8 only one thing to what Mr. Craig says.  
9 And that is, that speaking for myself, I  
10 continue to be very much, not so much  
11 troubled, but at least interested in the  
12 core issue here which, in my opinion, is  
13 what exactly is the controlling law  
14 that's governing our decision on the  
15 merits.

16 And on the one hand the Telenor  
17 position starts out, well, of course,  
18 New York law applies and from that point  
19 on it's almost a foregone conclusion  
20 what the result is.

21 Conversely, when you read the  
22 materials that are submitted by Storm,  
23 they start out with, well, of course,  
24 what the applicable law is is the law of  
25 Ukraine. And once you get over that it

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1 Proceedings  
2 what we would do, subject to the  
3 tribunal's approval, is submit proposed  
4 findings and conclusions, just as we  
5 would after the close of the evidence in  
6 a bench trial in federal court. And  
7 we'll, of course, address their  
8 contentions.

9 ARBITRATOR CRAIG: That's fine.  
10 I just think you ought to know what  
11 we're going to be looking at at the same  
12 time we're looking at yours.

13 MR. SILLS: I appreciate that. I  
14 suppose that's helpful. I suppose if  
15 they do continue their nonparticipation  
16 that's all you'd have to look at in  
17 terms of what their position is.

18 I guess we should just note for  
19 the record that of the three witnesses  
20 that had been designated by Storm, they  
21 had told us -- three of the witnesses  
22 designated by Storm would be subject to  
23 cross-examination, that's Mr. Magnus,  
24 Mr. Khudykov, and possibly Mr. Kulikov.  
25 And I just want to note for the record

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1 Proceedings  
2 sort of follows, of course, that they  
3 come out right. So I think that both  
4 sides need to make certain in their  
5 post-evidentiary hearing submission that  
6 you really lay out why the panel needs  
7 to come out with your view as to the  
8 applicable law on the merits of this  
9 controversy.

10 MR. SILLS: And we're planning  
11 to. But I should -- could you get that.  
12 You know, I should note for the record  
13 that, and I understand that Storm made  
14 this point, I will note, and we'll brief  
15 this, that the cases that they cite and  
16 rely on were all -- all involve New York  
17 law prior to a critical statutory  
18 amendment to which they do not refer.

19 In 1984 New York adopted Section  
20 514-01 of its general obligations law  
21 which expressly endorses the principle  
22 of full court party autonomy to  
23 designate governing law. So that the  
24 choice of law argument they made might  
25 have had some appeal in 1983 but it's

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1 Proceedings  
2 been changed by the legislature in  
3 New York. And I think also, and this is  
4 a point that's been briefed to some  
5 extent here, it's been briefed  
6 extensively before Judge Lynch, and  
7 we'll, of course, brief it here.

8 The other point is that as a  
9 matter of sort of the customary law of  
10 international arbitration, I guess the  
11 best source is Julian Lew's treatise  
12 which is consulted as an authority by  
13 everyone. And I'll note that he is the  
14 senior partner in the arbitration group  
15 of the firm that had long experience in  
16 representing Alfa Group, the Herbert  
17 Smith firm.

18 He makes an express point, and  
19 we'll supply the quotation, that party  
20 autonomy is a key, if not the key  
21 principle in international arbitration.  
22 And that it is universally followed by  
23 international arbitration tribunals, and  
24 that the parties have full autonomy to  
25 designate the governing law. As well as

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1 Proceedings  
2 we're going to come down on Telenor's  
3 side, and we may very well come down on  
4 Storm's side, how do we get over this  
5 question that maybe there was never a  
6 valid agreement in the first place.

7 And don't we have to, in order to  
8 even reach that issue, say to ourselves,  
9 that issue is decided by New York law or  
10 by Ukrainian law. And I think it begs  
11 the question a little bit if you simply  
12 say, well, the parties have the right to  
13 choose New York law. But what if they  
14 never chose it? That's the issue that I  
15 think, for me, we need to get over.

16 MR. SILLS: I understand your  
17 question. Although I think the approach  
18 we both -- you've obviously got to start  
19 unraveling the knot somewhere. You  
20 know, both the law of the seat and the  
21 law chosen by the parties point in the  
22 same direction. And as you know, in  
23 international arbitration the law of the  
24 seat is a critical factor as well, that  
25 is, the procedural law, the sort of

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1 Proceedings  
2 the express sanction in the Uncitral  
3 rules themselves. So we will address  
4 that.

5 ARBITRATOR JENTES: Again, now is  
6 not the point to engage in this  
7 arbitration discussion about the  
8 applicable law. I think what, if I may  
9 suggest, you need to address is, what if  
10 we were to conclude that in fact no  
11 agreement was ever reached because the  
12 applicable people at Storm and Kyivstar  
13 didn't have the authority to reach that  
14 agreement. Where does that leave us in  
15 the choice of law issue. That's what I  
16 think is the important issue that we at  
17 least need to get over.

18 You look puzzled, and I  
19 understand why you're puzzled, because  
20 both sides have come at this from a  
21 totally different world view of what's  
22 the issue here. All I'm trying to say  
23 is, speaking only for myself, I continue  
24 to be at least interested in trying to  
25 find out how we, as a panel, assuming

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1 Proceedings  
2 choice of law, methodology of the place  
3 where the arbitration is being  
4 conducted.

5 So that, I mean, I think it's an  
6 obviously important issue. But I think  
7 the answer, and we'll brief this, of  
8 course, is very clear under both the law  
9 of New York, which would obviously  
10 govern, you know, any review of a  
11 decision, and, you know, it will be  
12 Judge Lynch who will decide that. He's  
13 already expressed at least a preliminary  
14 view on that. As well as sort of  
15 customary, to the extent there's sort of  
16 a customary international law of  
17 international arbitration, and that's  
18 why I refer to Mr. Lew's treatise, would  
19 point in exactly the same direction.

20 So that the validity of the  
21 agreement designating New York law being  
22 heard in New York would itself be tested  
23 under New York law and not under  
24 Ukrainian law. And we'll address --  
25 that I take it is the point you're



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1 Proceedings  
2 asking us to address?  
3 ARBITRATOR JENTES: I'll only add  
4 one other thing so that you understand.  
5 You assume that it's the law of the  
6 place where the arbitration is sitting.  
7 But what if there is no agreement that  
8 New York is the place for the  
9 arbitration to sit because, at least if  
10 I take the view of the Ukrainian courts,  
11 there never was an agreement on  
12 arbitration taking place in New York?  
13 MR. SILLS: Well, but that raises  
14 two questions, I think, Mr. Jentes. The  
15 first is that, as a matter of New York  
16 law, the Uncitral rules and U.S. federal  
17 law, the law passed on by Judge Lynch,  
18 and the customary law of international  
19 arbitration, the arbitration clause is  
20 itself separable. And we've already  
21 crossed that bridge, twice now after  
22 this morning's ruling.  
23 So that we're over the hump of  
24 whether or not there's an agreement to  
25 arbitrate. That's been argued twice and

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1 Proceedings  
2 before Judge Lynch that the Cypress  
3 Company isn't even notionally  
4 participating, that months ago it gave a  
5 general power of attorney to someone.  
6 We will brief all that. We  
7 understand it's an important issue.  
8 Although, I really have to say I think  
9 there's a very clear answer in the  
10 governing law, and that there's no  
11 occasion for applying Ukrainian law,  
12 whatever it may be. And that there is,  
13 in any event, very little evidence on  
14 the record, other than these collusive  
15 decisions as to what Ukrainian law is.  
16 THE CHAIRMAN: All right.  
17 Mr. Sills, thank you. We're ready for  
18 your next witness.  
19 MR. SILLS: Thank you.  
20 Mr. Chairman, we call Frederick  
21 Lykke.  
22 THE CHAIRMAN: Mr. Lykke, would  
23 you raise your right hand, please.  
24  
25

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1 Proceedings  
2 lost twice by Storm. And that, it seems  
3 to me, is the key to unraveling the  
4 knot.  
5 Once there's been a decision that  
6 there's a valid agreement to arbitrate,  
7 and there's been that decision, then  
8 everything else follows from that. The  
9 valid agreement to arbitrate is in  
10 New York. The arbitration agreement  
11 expressly provides for arbitration in  
12 New York. And so once we've crossed  
13 that bridge, there is a valid agreement  
14 to arbitrate in New York.  
15 I have to say, I mean, I don't  
16 want to rehearse all the evidence, that  
17 these Ukrainian orders are meaningless  
18 and collusive, and there have now been  
19 two litigated findings in a real court  
20 in New York to precisely that effect.  
21 And there is no meaningful evidence that  
22 the Cypress Shell Company that he's  
23 suing his own subsidiary has any  
24 interest in the case. And, in fact,  
25 there was evidence at the last hearing

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1 Proceedings  
2 FREDRIK LYKKE,  
3 called as a witness, having been first  
4 duly sworn by the Notary Public (Amy E.  
5 Sikora), was examined and testified as  
6 follows:  
7 DIRECT EXAMINATION  
8 BY MR. SILLS:  
9 Q. Mr. Lykke, could you state your  
10 name for the record?  
11 A. Fredrik Lykke.  
12 Q. How are you employed?  
13 A. As of Monday this week or last  
14 week, I started private practice in DLA  
15 Piper. Prior to that, ending on Friday, 8th  
16 of December, I was employed as in-house  
17 counsel with Telenor ASA.  
18 Q. When did you begin your  
19 employment with Telenor?  
20 A. 1st February 1999.  
21 Q. And could you briefly describe  
22 for us your duties and responsibilities as  
23 in-house counsel for Telenor?  
24 A. Yes. I work mainly on M & A  
25 contracts, joint ventures for various

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1 Lykke - Direct  
 2 entities within the Telenor group. In  
 3 particular, for the mobile division.  
 4 **Q. Do you recall previously**  
 5 **submitting an affidavit in this proceeding?**  
 6 A. Yes, I do.  
 7 **Q. If you were to testify today on**  
 8 **the subject matter of that affidavit, would**  
 9 **you testify to the same effect?**  
 10 A. Yes, I would.  
 11 **Q. And have you read and reviewed**  
 12 **the affidavit of Mr. Egil Hansen in this**  
 13 **matter?**  
 14 A. Yes, I have.  
 15 **Q. Is there anything in that**  
 16 **affidavit with which you disagree?**  
 17 A. No. However, I'm, of course, not  
 18 aware of all the facts in that affidavit, but  
 19 to my knowledge there's nothing I disagree  
 20 with.  
 21 **Q. Were you the attorney, the**  
 22 **in-house attorney at Telenor, responsible for**  
 23 **the negotiation and execution of the 2002**  
 24 **voting rights agreement?**  
 25 A. Yes.

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1 Lykke - Direct  
 2 liaison between the business persons, Alfa  
 3 counsel, for the actual drafting of the  
 4 agreements.  
 5 MR. SILLS: Bear with me one  
 6 second, Mr. Chairman.  
 7 Mr. Chairman, we've handed a  
 8 premarked set of exhibits to Mr. Lykke  
 9 and also for the panel as well. And I  
 10 would ask that we use these exhibit  
 11 numbers.  
 12 **Q. Could you turn to Exhibit 5 in**  
 13 **the premarked set of documents, Mr. Lykke.**  
 14 A. Yes.  
 15 **Q. Have you seen this document**  
 16 **before?**  
 17 A. This is an e-mail from Peter  
 18 O'Driscoll dated 28th of April.  
 19 **Q. And can you describe the document**  
 20 **annexed to it?**  
 21 A. That is the draft letter  
 22 agreement to the term sheets which was  
 23 finally dated on the 29th of April.  
 24 **Q. And what was your understanding**  
 25 **of the business purpose of this term sheet?**

1 Lykke - Direct  
 2 **Q. Were you the in-house attorney at**  
 3 **Telenor responsible for the drafting and**  
 4 **execution of the 2002 shareholder's**  
 5 **agreement?**  
 6 A. Yes.  
 7 **Q. And were you involved in the**  
 8 **drafting and negotiation of the changes to**  
 9 **the 2002 shareholder's agreement that**  
 10 **resulted in the 2004 shareholder's agreement?**  
 11 A. Yes, I was.  
 12 **Q. Could you briefly describe for us**  
 13 **what your role was vis-a-vis the business**  
 14 **personnel at Telenor and outside counsel for**  
 15 **Telenor in those negotiations?**  
 16 A. Yes. Most of the negotiations  
 17 were commercial negotiations, so there was  
 18 commercial negotiations with primarily when  
 19 Egil Hansen left. And he asked me to assist  
 20 on the legal side as in-house counsel. We  
 21 also then retained Coudert Brothers. These  
 22 were outside New York counsel or U.S.  
 23 counsel.  
 24 And my role was to -- to advise  
 25 internally Egil Hansen on various matters and

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1 **Lykke - Direct**  
 2 A. Well, it was to set the process  
 3 going forward which would lead to Telenor  
 4 becoming the majority of Kyivstar with Storm  
 5 as a minority shareholder with 43.5 percent  
 6 of Telenor, and the steps leading up to that.  
 7 We should have included  
 8 anticipated future happenings. And that  
 9 included a new shareholder's agreement  
 10 between the two parties, when other  
 11 shareholders have disposed of their shares.  
 12 That was basically it.  
 13 **Q. With whom were you negotiating --**  
 14 **let me rephrase that.**  
 15 **Who was Telenor's counterparty in**  
 16 **these negotiations? Was it Storm or was it**  
 17 **Alfa?**  
 18 A. Well, mostly was representatives  
 19 of Alfa, the Alfa Group, who were negotiating  
 20 in a way on behalf of Storm, as Alfa was in  
 21 the process of acquiring Storm or at least  
 22 parts of it.  
 23 **Q. Could you turn to page 8 of this**  
 24 **exhibit, please. And, in particular, to the**  
 25 **section headed "shareholder's agreement."**

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1 Lykke - Direct

2 A. Yeah.

3 **Q. Can you describe for the panel**  
4 **your understanding of the business purpose of**  
5 **these terms?**

6 A. The business purpose was that  
7 Telenor should have a controlling share  
8 holding, having the majority of the board.  
9 However, giving Storm some protection in the  
10 form of veto rights in the corporate  
11 governance.

12 **Q. And was that expressed in the**  
13 **form of requiring a super majority of the**  
14 **board for particular corporate decisions?**

15 A. Yes.

16 **Q. To your understanding, does the**  
17 **exhibit we're looking at reflect the business**  
18 **understanding between the parties as to the**  
19 **composition of the board?**

20 A. Yes.

21 **Q. Okay. Look at page 10, if you**  
22 **would.**

23 A. Yes.

24 **Q. You see the section headed**  
25 **"Noncompete"?**

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1 Lykke - Direct

2 template or a starting point a similar -- a  
3 similar noncompete provision which Telenor  
4 and Alfa had negotiated this in Russia for  
5 the company VimpelCom.

6 As we started out with that  
7 wording, and then we have certain tailoring  
8 of the clause to make it work in Ukraine with  
9 respect to factual circumstances, and it came  
10 up during the discussions that Alfa have an  
11 ownership in a company called Golden Telecom,  
12 which has a subsidiary in Ukraine.

13 So we have -- Telenor agreed to  
14 have a carveout for that holding which  
15 otherwise would be breach of the general  
16 noncompete starting point. And then we did  
17 some additional tailoring of the clause  
18 making sure that -- that directors which Alfa  
19 nominated cannot be heavily involved or  
20 involved in the Golden Telecom company in any  
21 way.

22 **Q. And what was the reason for**  
23 **requiring that there be no cross**  
24 **directorships?**

25 A. Well, that was basically to make

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1 Lykke - Direct

2 A. Yes.

3 **Q. Okay. Were there discussions of**  
4 **which you're aware between Alfa, representing**  
5 **Storm on the one hand, and Telenor on the**  
6 **other, concerning a noncompete provision**  
7 **being put into the shareholder's agreement?**

8 A. Yes. Normally, Telenor, as the  
9 industrial player in communication ventures,  
10 require a noncompete from its own partners  
11 because of market secrets, technology, know  
12 how, et cetera.

13 In order to in a way protect that  
14 information and the knowledge and know how,  
15 we ordinarily enter into a noncompete  
16 provision with the local partner in order for  
17 them not to exploit that information in other  
18 ventures competing with other partners in a  
19 particular jurisdiction.

20 In this matter there was a  
21 noncompete clause in the old shareholder's  
22 agreement which I mentioned earlier.  
23 However, when Alfa came in and was the  
24 driving force on behalf of Storm, we decided,  
25 together with them, that we should use as a

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1 Lykke - Direct

2 the noncompete a bit safer. As directors in  
3 Kyivstar always, they would receive a lot of  
4 confidential information about, well, call it  
5 Telenor specific plans of technology, which  
6 means of value for that company and that  
7 shouldn't easily be transferred to knowledge  
8 of people working for the competitor in  
9 Ukraine, namely, the subsidiary of Golden  
10 Telecom.

11 **Q. In the course of your**  
12 **negotiations and discussions concerning the**  
13 **noncompete, did anyone from Alfa ever suggest**  
14 **in words or substance that it would apply**  
15 **only to Storm and that Alfa would be free to**  
16 **compete through other corporations in**  
17 **Ukraine?**

18 A. No, no. That was never  
19 suggested. It was only related to Storm.

20 **Q. Well, you say it wasn't suggested**  
21 **that it would only relate to Storm. What was**  
22 **your understanding in these negotiations as**  
23 **to who was bound by the noncompete on the**  
24 **Alfa side?**

25 A. Well, basically the technique in

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1 Lykke - Direct  
 2 the agreements, it covers all affiliates of  
 3 each of the parties. And that's kind of a  
 4 dynamic definition. So we would also cover  
 5 future affiliates, also the signing of the  
 6 agreements. And it would, on the other hand,  
 7 not be -- we wouldn't stop covering  
 8 affiliates at the time of signing the  
 9 agreement, if those affiliates were sold to  
 10 that related party.

11 And the purpose of that was, of  
 12 course, to ensure that a group of companies  
 13 couldn't circumvent the clause by having  
 14 activities in sister companies or other  
 15 companies within the same group, where  
 16 information usually flowed rather freely.

17 **Q. In the course of your**  
 18 **negotiations, did anyone from the Alfa side**  
 19 **ever suggest that for the noncompete to cover**  
 20 **the entire territory of Ukraine was unfair or**  
 21 **unreasonable?**

22 A. No, I never heard that.

23 **Q. Did any person representing Alfa,**  
 24 **in the course of these discussions and**  
 25 **negotiations, ever suggest there should be**

1 Lykke - Direct  
 2 **some kind of time limit on the noncompete,**  
 3 **other than the ones set forth in the term**  
 4 **sheet?**

5 A. Not that I recall, no.

6 **Q. And did this provision that we're**  
 7 **looking at in Exhibit 5 carry forward into**  
 8 **the shareholder's agreement?**

9 A. Yes.

10 **Q. And from the time of the term**  
 11 **sheet until the time the shareholder's**  
 12 **agreement was signed in 2004, did anyone from**  
 13 **Alfa ever object to any of the terms or**  
 14 **provisions of the noncompete?**

15 A. Not to my knowledge, no.

16 **Q. Look, if you would, at page 13 of**  
 17 **the term sheet.**

18 A. Yes.

19 **Q. Do you have that before you?**

20 A. Yes.

21 **Q. Look at the section headed**  
 22 **"Governing Law," if you would.**

23 A. Yes.

24 **Q. Does this reflect an agreement**  
 25 **that the shareholder's agreement will be**

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1 Lykke - Direct  
 2 **governed by the laws of the State of New**  
 3 **York?**

4 A. Yes.

5 **Q. Were there discussions and**  
 6 **negotiations between Alfa on the one hand,**  
 7 **and Telenor on the other as to what law would**  
 8 **govern the agreements?**

9 A. No. I don't think there were any  
 10 particular discussions about that. I think  
 11 we quite frequently landed on U.S. law or  
 12 New York law.

13 **Q. When you say we landed, do you**  
 14 **mean that Alfa and Telenor, Storm and**  
 15 **Telenor, agreed readily on the application of**  
 16 **U.S. law?**

17 A. I mean, in these kinds of joint  
 18 ventures, it's usually either English or  
 19 New York law which is relevant. I don't  
 20 recall whether we discussed whether it should  
 21 be English law. I don't think we did. I  
 22 think it was New York law from the start.  
 23 And that we had both of us had U.S. lawyers  
 24 and that was kind of the natural choice when  
 25 we decided not to continue with Swedish law.

1 Lykke - Direct

2 **Q. I'm sorry, please continue.**

3 A. Originally, in the earlier  
 4 agreement with Ukraine after Kyivstar, it was  
 5 Swedish law.

6 **Q. And --**

7 A. But --

8 **Q. Do you mean in the 1998**  
 9 **shareholder's agreement there was Swedish**  
 10 **law?**

11 A. Yeah. I think it was Swedish  
 12 law.

13 **Q. And in negotiating the new**  
 14 **contract, the term sheet reflects New York**  
 15 **law as the governing law?**

16 A. Yes.

17 **Q. Was there ever any objection,**  
 18 **from the time the term sheet was first**  
 19 **proposed until the shareholder's agreement**  
 20 **was executed in 2004, on the part of anyone**  
 21 **from Storm or Alfa to the application of**  
 22 **New York law?**

23 A. No.

24 **Q. Did anyone from Storm or Alfa**  
 25 **ever suggest at any point in the negotiations**



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1 Lykke - Direct

2 **that any law other than the law of New York**  
3 **should apply to the contract?**

4 A. No. Not my knowledge.

5 **Q. Did anyone from Storm or Alfa**  
6 **ever suggest, in the course of those**  
7 **negotiations, that the law of any**  
8 **jurisdiction other than New York would apply**  
9 **or would have to apply to any aspect of the**  
10 **relationship between the parties?**

11 A. No.

12 **Q. Did anyone from Alfa or Telenor**  
13 **ever state that Ukrainian law would govern**  
14 **one or more aspects of the relationship**  
15 **between the parties?**

16 A. No. Not more than the part you  
17 would have to comply with some Ukrainian  
18 applications within Kyivstar. But not  
19 governing the shareholder relationship. That  
20 was the point about it.

21 ARBITRATOR CRAIG: Could I ask a  
22 question about that?

23 MR. SILLS: Of course.

24 ARBITRATOR CRAIG: You just said  
25 that it was understood that the

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1 Lykke - Direct

2 shareholder relationship would be  
3 governed by New York law. Is that what  
4 you just said?

5 THE WITNESS: No. I said that --  
6 the question was whether Ukrainian law  
7 would have any sort of impact in court  
8 for the joint venture, basically. That  
9 was how I understood it.

10 And what I said was that -- was  
11 that the purpose of this agreement was  
12 to have it under New York law, have it  
13 outside Ukrainian law, and Kyivstar was  
14 also a party. However, I don't think  
15 Alfa in any way made any particular  
16 point out of it. But when doing  
17 business in Ukraine, you have to follow  
18 Ukrainian rules, and some of those could  
19 have an impact also on the company  
20 sometimes.

21 **Q. Mr. Lykke, when you speak about**  
22 **that, do you mean sort of the technical**  
23 **corporate rules of Ukrainian law having to do**  
24 **with the actual structure of Kyivstar?**

25 A. Yeah.

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1 Lykke - Direct

2 **Q. Was there ever any suggestion**  
3 **that the parties in -- the parties, that is,**  
4 **the Storm and Alfa parties on the one hand,**  
5 **and Telenor on the other, that their**  
6 **relationship between themselves would be**  
7 **governed by any law other than New York?**

8 A. No. That was completely  
9 New York. And that we went through -- that  
10 we were very detailed on in the shareholder's  
11 agreement, that the parties were obliged to  
12 make the agreement under New York law work  
13 also in Ukraine.

14 **Q. Was there an understanding**  
15 **between the parties as to what would happen**  
16 **if, because of a change or requirement in**  
17 **Ukrainian law, the charter -- let me rephrase**  
18 **that question.**

19 **Was there any agreement between**  
20 **the parties as to which would have primacy,**  
21 **the governance arrangements in the**  
22 **shareholder's agreement or the requirements**  
23 **of Ukrainian law, with regard to the**  
24 **governance of Kyivstar?**

25 A. The shareholder's agreement was

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1 Lykke - Direct

2 the priority. That was spelled out very  
3 explicitly in the agreement. There were  
4 anticipated that would have to be done some  
5 changes to the articles. And it was  
6 explicitly stated in the shareholder's  
7 agreement that the parties would -- would  
8 make all relevant changes pursuant then  
9 through the shareholder's agreement of the  
10 articles.

11 ARBITRATOR CRAIG: Was there any  
12 discussion of what would be covered by  
13 Ukrainian law, if anything?

14 THE WITNESS: I don't think there  
15 were any particular discussions about  
16 it. It was more about the -- the  
17 corporate backup, for instance, that the  
18 general meeting would have to formally  
19 decide, for instance, on an IPO, for  
20 instance. And whether issue of shares.  
21 Those kind of things.

22 Whereas, the difference between  
23 how you do things typically in the U.S.  
24 company or Ukrainian company or  
25 Norwegian company, you have to just



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1 Lykke - Direct  
 2 adjust for that in your overriding  
 3 shareholder's agreement.  
 4 MR. SILLS: Could we turn to one  
 5 other exhibit on that point for a  
 6 moment. Could you look at tab 16, which  
 7 is a copy of the shareholder's agreement  
 8 itself.  
 9 A. Yes.  
 10 ARBITRATOR CRAIG: Are you  
 11 looking at 2002 or 2004?  
 12 MR. SILLS: I'm looking at the  
 13 executed document, the 2004 agreement.  
 14 ARBITRATOR CRAIG: That would be  
 15 G attached to his affidavit?  
 16 MR. SILLS: I believe that's  
 17 right.  
 18 MR. O'DRISCOLL: Not G, no.  
 19 ARBITRATOR CRAIG: It's I.  
 20 MR. O'DRISCOLL: It would be I.  
 21 THE WITNESS: I.  
 22 **Q. Look, if you would, at section**  
 23 **6.03A on page 23 of the agreement.**  
 24 A. 6 point?  
 25 MR. O'DRISCOLL: 03.

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1 Lykke - Direct  
 2 give the text of the shareholder's agreement.  
 3 **Q. And was that always part of the**  
 4 **understanding between the parties?**  
 5 A. Yes. Absolutely.  
 6 **Q. Was this identical provision that**  
 7 **we're looking at in the 2002 version of the**  
 8 **agreement that was annexed to the voting**  
 9 **rights agreement?**  
 10 A. I think they were basically  
 11 identical. In the voting agreement?  
 12 **Q. No. In the 2000 -- in the**  
 13 **shareholder's agreement which is annexed to**  
 14 **the 2000 -- to the 2002 voting agreement.**  
 15 A. Yes. Yeah, that's identical.  
 16 However, it was 604. But this seems to be  
 17 the same clause. Basically, those agreements  
 18 were more or less the same.  
 19 **Q. Okay. And if you would turn,**  
 20 **please, to Exhibit 10, which is the voting**  
 21 **agreement.**  
 22 ARBITRATOR CRAIG: Wait a minute.  
 23 Is the 2002 shareholder's agreement --  
 24 where is that in the attachment here?  
 25 MR. SILLS: In the exhibits?

1 Lykke - Direct  
 2 ARBITRATOR CRAIG: We don't have  
 3 page 23. And we don't have the first  
 4 page --  
 5 THE CHAIRMAN: Okay, we've got  
 6 it.  
 7 MR. SILLS: Okay.  
 8 **Q. Now that we're all looking at the**  
 9 **same document.**  
 10 MR. SILLS: My apologies for the  
 11 copying error, Mr. Chairman.  
 12 **Q. You have page 23 before you,**  
 13 **Mr. Lykke?**  
 14 A. Yes.  
 15 **Q. Can you describe for us the**  
 16 **business purpose of the language we're**  
 17 **looking at in section 6.03A?**  
 18 A. Yes. This is an example of what  
 19 the parties are explicitly agreeing that the  
 20 shareholder's agreement and the will of the  
 21 shareholder's agreement and what was agreed  
 22 between the parties under the New York law  
 23 shall take party over kind of local issues in  
 24 the charter, for instance, and the parties  
 25 undertake to amend the charter in order to

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1 Lykke - Direct  
 2 ARBITRATOR CRAIG: In the  
 3 exhibits.  
 4 MS. THOMPSON: It would be  
 5 Exhibit D.  
 6 THE CHAIRMAN: D?  
 7 MS. THOMPSON: D, in the Lykke.  
 8 ARBITRATOR CRAIG: D, as in  
 9 David.  
 10 MR. SILLS: No. Mr. Craig, it  
 11 was the 2002 shareholder's agreement  
 12 which appears as part of the voting  
 13 agreement because it had that three-day  
 14 trigger.  
 15 ARBITRATOR CRAIG: I got it,  
 16 okay.  
 17 MR. SILLS: So it's the second  
 18 half of Exhibit C to Mr. Lykke's  
 19 previous affidavit.  
 20 **Q. And so looking at the voting**  
 21 **agreement, Mr. Lykke, which was executed in**  
 22 **2002.**  
 23 A. Same concept and the identical  
 24 wording. But this time in 503 of the voting  
 25 agreements.

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1 Lykke - Direct  
2 **Q. Okay. And the voting -- does the**  
3 **voting agreement have a governing law clause?**  
4 A. Yes.  
5 **Q. And what law is selected by the**  
6 **parties?**  
7 A. That's the same, New York law.  
8 **Q. In fact, substantively, the**  
9 **substantive business terms of the voting**  
10 **agreement are the same as the substantive**  
11 **business terms of the shareholder's**  
12 **agreement, aren't they?**  
13 A. That's right. And that was the  
14 purpose as well.  
15 **Q. And was there a noncompete**  
16 **provision in the voting agreement?**  
17 A. Yes. Yes, there was.  
18 **Q. Does it differ in any way from**  
19 **the noncompete provision in either the 2002**  
20 **shareholder's agreement or the 2004**  
21 **shareholder's agreement?**  
22 A. No. It's identical.  
23 ARBITRATOR CRAIG: That's 5.02?  
24 MR. O'DRISCOLL: That's correct.  
25 MR. SILLS: Yes.

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1 Lykke - Direct  
2 an attachment -- with the new shareholder's  
3 agreement, which was basically the same as  
4 the voting agreement, with an annex in which  
5 we agreed to enter into the new shareholder  
6 agreement when certain events have taken  
7 place, which then did take place in  
8 January '04.  
9 **Q. Mr. Lykke, in the course of your**  
10 **discussions and negotiations in 2002 leading**  
11 **up to the execution of the voting agreement,**  
12 **did you deal with an individual named David**  
13 **Wack, W-A-C-K?**  
14 A. Yes, partly. Most of it went  
15 through external counsel, but I was also  
16 involved with him.  
17 **Q. Who is Mr. Wack?**  
18 A. He was the U.S. counsel for the  
19 Alfa Group based in Moscow.  
20 **Q. In Oslo or in Kiev?**  
21 A. Moscow.  
22 **Q. Moscow.**  
23 THE CHAIRMAN: Moscow.  
24 **Q. Turn, if you would, to Exhibit 8**  
25 **in the premarked set of documents. Do you**

1 Lykke - Direct  
2 **Q. And with respect to dispute**  
3 **resolution, is there any difference in the**  
4 **arbitration provisions among the voting**  
5 **agreement, the 2002 shareholder's agreement,**  
6 **and the 2004 shareholder's agreement?**  
7 A. No. I haven't double-checked  
8 whether they exactly the same, but they  
9 should be exactly the same, and I think they  
10 are. They seem to be the same. Yes.  
11 Basically, the whole agreement  
12 package was agreed to in 2002. And the new  
13 shareholder's agreement from 2004 was really  
14 a technical thing, due to some changes on  
15 number of shareholders and the fact that we  
16 were then able to terminate old shareholder's  
17 agreement.  
18 We had a voting agreement in  
19 order to have that alongside the existing  
20 shareholder's agreement, which couldn't be  
21 terminated without all parties consenting to  
22 it. But the whole agreement all along was  
23 that we should act under the new regime, so  
24 to speak, from 2002.  
25 Then on the voting agreement with

1 **Lykke - Direct**  
2 **recall receiving this document?**  
3 A. Yes.  
4 **Q. Okay. Could you just read for us**  
5 **the second sentence that Mr. Wack -- well,**  
6 **let me lay a foundation for this.**  
7 **For what purpose was this e-mail**  
8 **sent to you?**  
9 A. Basically, there was just in  
10 order to have the signing formalities in  
11 place. For Storm there a question as to --  
12 as to whether two persons needed to sign on  
13 behalf of Storm or not. Basically, David  
14 Wack came back to us and confirmed to us some  
15 factual matters with the consequence that one  
16 only needed one signatory for Storm.  
17 **Q. And is that -- and would you read**  
18 **for us, please, the second sentence of the**  
19 **first paragraph of Mr. Wack's e-mail?**  
20 A. Yes. "I will confirm that there  
21 is no acting chief accountant for Storm and  
22 that no second signature is required under  
23 Ukrainian law, although presumably since the  
24 contract is governed by Swedish law and  
25 conflicts rules have been excluded, Ukrainian

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1 Lykke - Direct  
2 law is not relevant for this purpose."  
3 **Q. In all of your dealings with**  
4 **Mr. Wack or anyone else representing Alfa or**  
5 **Storm, did anyone ever suggest that Ukrainian**  
6 **law had any relevance at all to the question**  
7 **of authority to execute the various**  
8 **agreements?**  
9 A. No.  
10 **Q. In all of those discussions, did**  
11 **all of the representatives of Alfa and Storm**  
12 **take the same position that Mr. Wack did in**  
13 **this e-mail we're looking at, that Ukrainian**  
14 **law was irrelevant to that question?**  
15 A. That was never raised as an  
16 issue.  
17 **Q. Did anyone ever claim that there**  
18 **was some requirement, formal requirement of**  
19 **Ukrainian law that needed to be complied with**  
20 **in order for these agreements to be valid and**  
21 **binding?**  
22 A. No, not really.  
23 **Q. Did anyone ever suggest that the**  
24 **agreements had to be written in Ukrainian?**  
25 A. No.

1 Lykke - Direct  
2 **Q. Did anyone ever suggest that**  
3 **these agreements had to be registered with**  
4 **some state office in Ukraine?**  
5 A. No.  
6 **Q. Did anyone ever suggest that**  
7 **there was any other formality under Ukrainian**  
8 **law that had to be complied with in order for**  
9 **these agreements to be valid?**  
10 A. No.  
11 **Q. Look at tab 11 in the premarked**  
12 **documents, please.**  
13 ARBITRATOR CRAIG: We don't have  
14 the same book.  
15 MR. SILLS: I'm sorry, I thought  
16 that was already distributed. I  
17 apologize.  
18 ARBITRATOR CRAIG: What was the  
19 number of the Wack e-mail?  
20 MR. SILLS: That was, I believe,  
21 Exhibit 8, Mr. Craig.  
22 ARBITRATOR CRAIG: And this one's  
23 11?  
24 MR. SILLS: That's correct.  
25 **Q. And look, if you would, at the**

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1 Lykke - Direct  
2 **second e-mail in the chain. The one -- from**  
3 **Mr. Khyudiyakov to -- it's actually to**  
4 **Mr. Ekhougen with a copy to you. Do you**  
5 **recall receiving that?**  
6 A. Yes.  
7 **Q. Look at the second paragraph.**  
8 ARBITRATOR CRAIG: Page 2 of 3?  
9 MR. SILLS: That's correct.  
10 **Q. First, who is Mr. Khudyakov?**  
11 A. He was the negotiator for Storm  
12 who -- Storm/Alfa who was handling the  
13 practicalities on the -- on the amendments  
14 that were done to the shareholders. The new  
15 shareholder's agreement, so to speak, which  
16 was done on the 30th of January '04.  
17 **Q. Could you just read for us the**  
18 **first sentence -- the first two sentences of**  
19 **the second paragraph?**  
20 A. Okay. "We reviewed the New  
21 Shareholders Agreement, and there is no  
22 comment beyond what we've already discussed.  
23 Our firm position is that we do not want any  
24 further negotiations over the Agreement and  
25 should sign the text that was agreed last

1 Lykke - Direct  
2 year with small technical changes reflecting  
3 the Ericsson debt repayment and the third  
4 party to the Agreement."  
5 **Q. And is the agreement referred to**  
6 **there the 2002 version of the agreement**  
7 **annexed to the voting agreement?**  
8 A. Yes.  
9 **Q. Did there come a time when Alfa**  
10 **requested, despite Mr. Khudyakov's statement,**  
11 **changes to the shareholder's agreement?**  
12 A. They suggested a change to the  
13 termination provision, which Telenor found  
14 was -- was too much -- too much of an  
15 amendment. So we -- we wrote back to them  
16 and said that we did not want those changes  
17 but that we should be -- we should be looking  
18 at some kind of amendment on the termination.  
19 **Q. Did Telenor ever suggest any**  
20 **changes to the agreement, the 2002 agreement?**  
21 A. Not anything more than the actual  
22 technical issues, to my knowledge. Other  
23 than cleaning up factual matters, which have  
24 been outdated due to factual happenings in  
25 the meantime. For instance, what's mentioned

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1 Lykke - Direct  
2 here, the Ericsson matter.

3 **Q. Did there come a time when an**  
4 **agreement was reached on the change to the**  
5 **termination provisions requested by Storm?**

6 A. Yes.

7 **Q. From the time Mr. Khudyakov said**  
8 **that Storm did not want any changes to the**  
9 **agreement, until the time an agreement was**  
10 **struck on the change to the termination**  
11 **provisions, did anyone from Storm or Alfa**  
12 **suggest that there needed to be a new board**  
13 **meeting or a new meeting of participants or**  
14 **any other formality in order to execute the**  
15 **new agreement?**

16 A. No.

17 **Q. Look, if you would, at tab 15 in**  
18 **your witness book.**

19 ARBITRATOR CRAIG: Could you read  
20 back the previous question and answer,  
21 for me.

22 (Record read.)

23 **Q. And just to go back for a moment**  
24 **to that question, Mr. Lykke. The only**  
25 **changes to the agreement, that is, from the**

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1 **Lykke - Direct**  
2 **2002 agreement to the 2004 agreement, other**  
3 **than technical changes, were at the request**  
4 **of Storm; is that correct?**

5 A. Yes. I should be clear about  
6 that. The actual change -- the end result of  
7 the change was based upon a compromise  
8 suggestion from Telenor. That was -- that  
9 was a smaller change than that one that was  
10 suggested by Alfa in the first place or  
11 Storm.

12 **Q. So would it be fair to say that**  
13 **Storm requested a change, Telenor agreed to**  
14 **part of that change, and then it was executed**  
15 **in that form?**

16 A. Yes.

17 **Q. Can you tell us why Telenor was**  
18 **willing to consider the change to the 2002**  
19 **agreement proposed by Storm?**

20 A. Well, I think that we were  
21 interested in having the agreement signed up,  
22 putting the opening feuds behind us. From a  
23 business viewpoint, the change that was  
24 agreed to between the two of us was, in our  
25 view, not of any real importance. And we

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1 Lykke - Direct  
2 felt that we have all the control we needed  
3 anyway about having Storm trying to terminate  
4 the agreement because we have put in now a  
5 reasonable materiality threshold, and we  
6 didn't consider it any risk for us, the  
7 change.

8 ARBITRATOR CRAIG: When you say  
9 "we," who are you talking about?

10 THE WITNESS: Sorry, Telenor.

11 ARBITRATOR CRAIG: What  
12 individuals inside Telenor did you  
13 consult on this question?

14 THE WITNESS: Basically it was --

15 MR. SILLS: Could you just speak  
16 up a little, Mr. Lykke.

17 THE WITNESS: Yes, sorry.  
18 Sigmund Ekhougen and Kare Gustav were  
19 mainly holding this matter from the  
20 Telenor side.

21 ARBITRATOR CRAIG: Ekhougen?

22 THE WITNESS: Ekhougen, yes.

23 MR. SILLS: That's the same  
24 Mr. Ekhougen who has already testified.

25 **Q. Now, Telenor had originally**

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1 **Lykke - Direct**  
2 **resisted making any changes to the agreement,**  
3 **hadn't it?**

4 A. Yes. The starting point was  
5 probably that.

6 **Q. Do you know whether or not any**  
7 **pressure was put on senior executives at**  
8 **Telenor by senior executives at Alfa to**  
9 **engage in negotiations over the change**  
10 **requested by Alfa?**

11 A. No, I don't.

12 **Q. Look, if you would, at tab 15.**

13 MR. SILLS: Which we have  
14 distributed to the panel, Mr. Chairman.

15 **Q. This is an e-mail from**  
16 **Mr. Khudyakov to Mr. Divkovskiy with a copy**  
17 **to Mr. Ekhougen. Have you seen this document**  
18 **before?**

19 A. Yes.

20 **Q. And would you read for us the**  
21 **first two sentences.**

22 A. "Oleksiy, Storm reviewed the  
23 language of the New shareholder's agreement  
24 that was introduced yesterday and agreed to  
25 it. We are ready to sign tomorrow."



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1 Lykke - Direct  
2 **Q. The Oleksiy is Oleksiy**  
3 **Divkovskiy, outside counsel for Telenor?**  
4 A. That's correct.  
5 **Q. And the Alexey, spelled**  
6 **differently, who signed this agreement,**  
7 **that's Mr. Khudyakov?**  
8 A. Who signed the e-mail?  
9 **Q. Yes.**  
10 A. Yes. That's correct.  
11 **Q. And when he said, "We are ready**  
12 **to sign it tomorrow," did he say that there**  
13 **was any need for any further formalities?**  
14 A. No.  
15 **Q. And was, in fact, the document**  
16 **executed by Storm, as Mr. Khudyakov said it**  
17 **would be?**  
18 A. Yes. That's right.  
19 **Q. Who executed that document?**  
20 A. Mr. Nilov.  
21 **Q. Had Mr. Nilov signed other**  
22 **documents on behalf of Storm in the course of**  
23 **your dealings?**  
24 A. Yes. He signed most of them.  
25 **Q. Did he sign the voting agreement?**

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1 Lykke - Direct  
2 **quote, is duly authorized to sign the**  
3 **shareholder's agreement?**  
4 A. Yes.  
5 **Q. Did anyone from the Alfa side**  
6 **ever suggest to you that there was any**  
7 **limitation or qualification on the**  
8 **representation made in these two documents?**  
9 A. No.  
10 **Q. Look at the fax line at the top**  
11 **of Exhibit 17, please.**  
12 A. Yes.  
13 **Q. What does that reflect?**  
14 A. That it stems from Alfa Capital  
15 in Moscow.  
16 **Q. And does Mr. Kosogov work for**  
17 **Alfa Capital?**  
18 A. I believe so. At least one of  
19 the Alfa Group companies. And also I can  
20 mention that both Mr. Kosogov and Mr. Tumanov  
21 were well known to Telenor through our  
22 partnership with them for a couple of years,  
23 also Kosogov with respect to other holdings.  
24 **Q. At any time in the year 2004, did**  
25 **anyone from Alfa or Storm ever suggest there**

1 Lykke - Direct  
2 A. Yes.  
3 **Q. Did anyone ever question his**  
4 **authority to sign any of those documents?**  
5 A. No.  
6 **Q. Do you know what his title was at**  
7 **Storm?**  
8 A. He was general -- general --  
9 **Q. Was it general director?**  
10 A. General director or general  
11 manager.  
12 **Q. In addition to the document**  
13 **itself, the shareholder's agreement in 2004,**  
14 **were any documents attesting to Mr. Nilov's**  
15 **authority supplied to Telenor?**  
16 A. Yes. We received two  
17 certificates of incumbency dated the date on  
18 the agreement.  
19 **Q. Look, if you would, at tabs 18**  
20 **and 19. I'm sorry, 17 and 18.**  
21 A. Yeah.  
22 **Q. Are these the certificates that**  
23 **you just referred to?**  
24 A. That's correct.  
25 **Q. Do these reflect that Mr. Nilov,**

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1 Lykke - Direct  
2 **had been any problem or deficiency in the**  
3 **execution of the shareholder's agreement?**  
4 A. No.  
5 **Q. Were changes to the Kyivstar**  
6 **charter required by the shareholder's**  
7 **agreement made with Alfa's consent in 2004?**  
8 A. Yes.  
9 **Q. And in the year 2005, did anyone**  
10 **from Alfa or Storm ever claim or contend that**  
11 **there was any problem in the execution of the**  
12 **shareholder's agreement?**  
13 A. Not to my knowledge, no.  
14 **Q. Did anyone ever suggest, in the**  
15 **year 2005, that Mr. Nilov had not been fully**  
16 **and duly authorized to execute the**  
17 **shareholder's agreement?**  
18 A. No. Not to my knowledge.  
19 **Q. Until Alfa put out a press**  
20 **release in 2006 claiming that Mr. Nilov had**  
21 **not been duly authorized to execute the**  
22 **shareholder's agreement, did anyone from Alfa**  
23 **or Storm or acting on their behalf ever**  
24 **suggest, publicly or privately, that there**  
25 **was any problem with Mr. Nilov's execution of**



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<p>1 <b>Lykke - Direct</b></p> <p>2 <b>the shareholder's agreement?</b></p> <p>3 A. No. Not to my knowledge.</p> <p>4 <b>Q. If Alfa and Storm had not been</b></p> <p>5 <b>willing to execute the shareholder's</b></p> <p>6 <b>agreement, would Telenor have allowed Alfa to</b></p> <p>7 <b>buy into Kyivstar?</b></p> <p>8 A. No. I'm rather certain about</p> <p>9 that. That was not kind of my decision, but</p> <p>10 it was very clear to me that these -- that</p> <p>11 the shareholder agreement was a very critical</p> <p>12 condition for letting Storm or Alfa increase</p> <p>13 their ownership in Kyivstar.</p> <p>14 MR. SILLS: Thank you,</p> <p>15 Mr. Chairman. Thank you, Mr. Lykke.</p> <p>16 That's all I have.</p> <p>17 THE CHAIRMAN: Mr. Lykke, there</p> <p>18 may be some questions from the panel.</p> <p>19 Mr. Jentes.</p> <p>20 THE WITNESS: Okay.</p> <p>21 ARBITRATOR JENTES: I'd like to</p> <p>22 go back to the first set of documents</p> <p>23 that you were shown that began with</p> <p>24 Mr. O'Driscoll's e-mail, and then</p> <p>25 there's the attachments of the letter</p>	<p>1 Lykke - Direct</p> <p>2 and the sort of term sheet.</p> <p>3 Do you have those?</p> <p>4 THE WITNESS: Yes.</p> <p>5 ARBITRATOR JENTES: The letter,</p> <p>6 or the two forms of the letter that are</p> <p>7 attached, indicate that this is an</p> <p>8 agreement among Alfa Bank and Storm and</p> <p>9 Telenor. And I take it that you were</p> <p>10 the principal negotiator involved in</p> <p>11 this set of documents; is that correct?</p> <p>12 THE WITNESS: No. It was Egil</p> <p>13 Hansen, who left the negotiations.</p> <p>14 ARBITRATOR JENTES: That was on</p> <p>15 behalf of Telenor?</p> <p>16 THE WITNESS: That's correct.</p> <p>17 Yes.</p> <p>18 ARBITRATOR JENTES: And what was</p> <p>19 your role in the negotiations?</p> <p>20 THE WITNESS: Well, I</p> <p>21 participated in some meetings with Alfa</p> <p>22 personnel. I liaised a bit between</p> <p>23 Peter O'Driscoll and Egil Hansen. Was</p> <p>24 part of a sparring partner with Egil</p> <p>25 Hansen on some of these meetings.</p>
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<p>1 Lykke - Direct</p> <p>2 However, there was a number of meetings</p> <p>3 that I was not involved in during the</p> <p>4 negotiations.</p> <p>5 ARBITRATOR JENTES: Who did you</p> <p>6 deal with from the Alfa Group?</p> <p>7 THE WITNESS: Mainly, Kirill</p> <p>8 Stayn. I also met Mr. Tolchinsky once</p> <p>9 and Alex Shtyrba.</p> <p>10 ARBITRATOR JENTES: What were</p> <p>11 their positions in the overall Alfa</p> <p>12 Group?</p> <p>13 THE WITNESS: Well, I think that</p> <p>14 Tolchinsky was in a way head of their</p> <p>15 M &amp; A activities. Kirill Stayn was a</p> <p>16 kind of an in-house counsel. And Alex</p> <p>17 Shtyrba was -- was kind of a business</p> <p>18 negotiator on their team, I believe.</p> <p>19 ARBITRATOR JENTES: All right.</p> <p>20 When it got around to drafting the</p> <p>21 letter that ultimately became the</p> <p>22 April 29, 2002 document, were you</p> <p>23 actively involved in the drafting and</p> <p>24 finalization of that document?</p> <p>25 THE WITNESS: Yeah. I was</p>	<p>1 Lykke - Direct</p> <p>2 involved in that. Kind of in between,</p> <p>3 in a way. Alfa counsel and Egil Hansen.</p> <p>4 ARBITRATOR JENTES: All right.</p> <p>5 If you turn over to page 13, under the</p> <p>6 section on governing law, there's a</p> <p>7 sentence that I'd appreciate your</p> <p>8 explaining a little bit. It says, "To</p> <p>9 aid shareholders' understanding of the</p> <p>10 company's corporate governance and</p> <p>11 thereby enhance the company's ability to</p> <p>12 undertake an IPO in the United States,</p> <p>13 the shareholder's agreement and the</p> <p>14 registration rights agreement will be</p> <p>15 governed by the laws of the State of New</p> <p>16 York, United States of America."</p> <p>17 This sounds as though it was</p> <p>18 important to select the law of the State</p> <p>19 of New York for reasons of both sides to</p> <p>20 be able to market the ultimate company</p> <p>21 in a potential IPO. Was that -- am I</p> <p>22 correct about that?</p> <p>23 THE WITNESS: Yeah. An important</p> <p>24 aspect for Telenor was the possibility</p> <p>25 of being able to do an IPO in the United</p>

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1 Lykke - Direct  
2 States. So that is correct. Everything  
3 that could help an IPO in the U.S. was  
4 important for Telenor.  
5 ARBITRATOR JENTES: And I take  
6 it, if there would be an IPO, it would  
7 also be important to the Alfa Group and  
8 to Storm to have this same capability in  
9 the United States?  
10 THE WITNESS: Yeah.  
11 ARBITRATOR JENTES: With regard  
12 to the arbitration clause in this  
13 letter, you've already explained that  
14 the shareholder's agreement would be  
15 pursuant to Uncitral arbitration and  
16 would take place in New York City as the  
17 site of it.  
18 I was not clear from your  
19 testimony, was this a subject of  
20 discussion or negotiation between the  
21 Telenor side and the Storm side and the  
22 Alfa side to arrive at the use of  
23 Uncitral and the use of New York as  
24 being the place of the arbitration?  
25 THE WITNESS: No. I don't think

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2 Mr. Lykke, where there's a cover e-mail  
3 that's dated April 27th, struck out  
4 April 29th, 2002. The first paragraph  
5 talks about Alfa Bank or one of its  
6 affiliates collectively and Storm being  
7 able to acquire up to 43.5 percent of  
8 the issued and outstanding shares of  
9 Kyivstar. Do you see that right at the  
10 first paragraph?  
11 THE WITNESS: Yes.  
12 ARBITRATOR CRAIG: And that was a  
13 negotiated number, was it not?  
14 THE WITNESS: That's right.  
15 ARBITRATOR CRAIG: And that was a  
16 number that Alfa Bank and Storm desired;  
17 isn't that correct?  
18 THE WITNESS: Yes.  
19 ARBITRATOR CRAIG: And they  
20 wanted over 40 percent. Do you know why  
21 they wanted over 40 percent of the  
22 issued and outstanding shares of  
23 Kyivstar?  
24 THE WITNESS: Well, I think  
25 basically they wanted as much as

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2 that was an issue. I cannot recall  
3 being involved in discussions whether it  
4 should be ICT, whether it should be  
5 London, New York, English law or U.S.  
6 law. And since I don't recall any  
7 discussions about this, I draw the  
8 conclusion that the parties were happy  
9 with -- with this mechanism from the  
10 Alfa. It was also a typical selection  
11 in such a joint venture.  
12 ARBITRATOR JENTES: So if I  
13 understand, your testimony was that  
14 there simply was never any dispute  
15 between the Alfa and Storm people on the  
16 one side and the Telenor people on the  
17 other side that the Uncitral rules would  
18 be used and that New York would be the  
19 situs of the arbitration?  
20 THE WITNESS: No.  
21 ARBITRATOR JENTES: Okay. That's  
22 all the questions I have.  
23 THE CHAIRMAN: Any, Craig?  
24 ARBITRATOR CRAIG: Yes, I do.  
25 Looking at that same document,

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2 possible in a way. However, it was  
3 important for them to get above  
4 40 percent. I don't really recollect  
5 why it ended on 43.5.  
6 ARBITRATOR CRAIG: Well, you  
7 mentioned earlier, I think, when you  
8 were being questioned by Mr. Sills, of a  
9 veto right. Do you remember that  
10 testimony?  
11 THE WITNESS: Yes.  
12 ARBITRATOR CRAIG: Was it your  
13 impression that it was important to Alfa  
14 and Storm, as a precondition of its  
15 being involved in this venture with  
16 Telenor, that it have a veto right?  
17 THE WITNESS: Well, I think in  
18 general, as a large minority  
19 shareholder, you want some protection  
20 against decisions by the majority owner.  
21 So what we routinely see is that  
22 corporate governance structures are  
23 tailored in order to cater to both  
24 parties in an acceptable way. So we  
25 made our kind of private veto right

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<p>1 Lykke - Direct</p> <p>2 contractually whereby a certain number</p> <p>3 of directors were needed in order for</p> <p>4 the company to validly resolve certain</p> <p>5 issues, which was then negotiated</p> <p>6 heavily.</p> <p>7 For instance --</p> <p>8 ARBITRATOR CRAIG: Excuse me, go</p> <p>9 ahead.</p> <p>10 THE WITNESS: For instance,</p> <p>11 certain big investments, debt uptakes,</p> <p>12 et cetera, et cetera, with thresholds.</p> <p>13 So that was kind of a veto right I was</p> <p>14 talking about. The right to --</p> <p>15 ARBITRATOR CRAIG: Go ahead.</p> <p>16 THE WITNESS: That was -- when I</p> <p>17 say "veto right," I mean the ability</p> <p>18 to -- for the board members not to be</p> <p>19 overruled in certain well-defined areas</p> <p>20 which otherwise would be decided by a</p> <p>21 simple majority, for instance.</p> <p>22 ARBITRATOR CRAIG: And there</p> <p>23 were -- there was agreement between the</p> <p>24 parties that in this arrangement that a</p> <p>25 super majority would be required for</p>	<p>1 Lykke - Direct</p> <p>2 certain issues; correct?</p> <p>3 THE WITNESS: That's correct.</p> <p>4 ARBITRATOR CRAIG: Is there an</p> <p>5 identification of what issue would</p> <p>6 require a super majority?</p> <p>7 THE WITNESS: Yes.</p> <p>8 ARBITRATOR CRAIG: And where is</p> <p>9 that to be found? If you want to look</p> <p>10 at the --</p> <p>11 THE WITNESS: Yes.</p> <p>12 ARBITRATOR CRAIG: -- 2004</p> <p>13 agreement.</p> <p>14 THE WITNESS: The 2004 agreement,</p> <p>15 okay.</p> <p>16 MR. SILLS: That's tab 16 to the</p> <p>17 document you have before you.</p> <p>18 THE WITNESS: Yes.</p> <p>19 MR. SILLS: Mr. Craig, I don't</p> <p>20 want to testify for the witness, but we</p> <p>21 could point to the provision.</p> <p>22 ARBITRATOR CRAIG: Fine. Help us</p> <p>23 out.</p> <p>24 MR. SILLS: Could I direct your</p> <p>25 attention to page 10 of the document,</p>
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<p>1 Lykke - Direct</p> <p>2 Mr. Lykke.</p> <p>3 ARBITRATOR CRAIG: It's actually</p> <p>4 his document.</p> <p>5 MR. SILLS: I understand. It was</p> <p>6 just he was paging through it.</p> <p>7 THE WITNESS: Yeah. Yes, I have</p> <p>8 it here.</p> <p>9 ARBITRATOR CRAIG: Now, tell me,</p> <p>10 my question is, is this the list of</p> <p>11 issues for which a super majority is</p> <p>12 required?</p> <p>13 THE WITNESS: Yes.</p> <p>14 ARBITRATOR CRAIG: And the super</p> <p>15 majority that is required here is seven</p> <p>16 of the nine?</p> <p>17 THE WITNESS: That's correct.</p> <p>18 ARBITRATOR CRAIG: Including at</p> <p>19 least one director from Storm?</p> <p>20 THE WITNESS: Yes.</p> <p>21 ARBITRATOR CRAIG: Was there any</p> <p>22 effort to include other issues on this</p> <p>23 list that was rejected by Telenor?</p> <p>24 THE WITNESS: Well, there were</p> <p>25 quite a bit of negotiation about --</p>	<p>1 Lykke - Direct</p> <p>2 about the matters, about the thresholds,</p> <p>3 et cetera. And, in general, I don't in</p> <p>4 detail remember if there were any</p> <p>5 particular issues which they tried to</p> <p>6 negotiate into the detail catalog or</p> <p>7 which we should not succeed in or</p> <p>8 whether we found compromises on most of</p> <p>9 them.</p> <p>10 ARBITRATOR JENTES: In any event,</p> <p>11 this what a debated negotiated list, and</p> <p>12 this is the list that was the result of</p> <p>13 that negotiation?</p> <p>14 THE WITNESS: Definitely. This</p> <p>15 is always, in such joint ventures, is</p> <p>16 always want to spend the kind of, I</p> <p>17 don't know which percentage, but you</p> <p>18 spend an awful lot of time on this</p> <p>19 particular clause.</p> <p>20 ARBITRATOR CRAIG: Let me ask you</p> <p>21 another question about this</p> <p>22 shareholder's agreement. In the event</p> <p>23 the shareholder's agreement is silent on</p> <p>24 a particular subject, but there is a</p> <p>25 provision of Ukrainian law that imposes</p>

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1 Lykke - Direct  
2 some requirement on the corporation, if  
3 you are the lawyer advising the  
4 corporation, would the corporation be  
5 required to comply with Ukrainian law?  
6 THE WITNESS: Say that again.  
7 ARBITRATOR CRAIG: It's a  
8 hypothetical. In the event the  
9 shareholder's agreement is silent, there  
10 is nothing in the shareholder's  
11 agreement that you can look to to  
12 consult as to what the corporation  
13 should do, but there's a law in Ukraine  
14 that requires the corporation to do  
15 something, whether it's to register,  
16 whether it's to have no smoking in your  
17 hallways, if it requires minimum wage,  
18 if it requires child labor laws, in your  
19 judgment as a lawyer, what would be the  
20 obligation of Kyivstar?  
21 THE WITNESS: Well, if there are  
22 no factors which can lead you to  
23 interpret within the contract, something  
24 contradictory to that, Kyivstar, being a  
25 Ukrainian company, would have to follow

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1 Lykke - Direct  
2 since Kyivstar, they're a party to the  
3 agreement, to the shareholder's  
4 agreement, it would have to comply with  
5 the agreement, and then it would have to  
6 consider the Ukrainian relevant law as  
7 to whether that could be -- could be,  
8 what you call it, could be deviated from  
9 or whether it was kind of something you  
10 mandatorily have to follow.  
11 To clear this up, if it was  
12 either criminal or something, but then  
13 going through the chain, I guess, from  
14 civil law and more procedures and  
15 general law which could be agreed  
16 around, you could deviate from it, of  
17 the shareholder's agreement.  
18 ARBITRATOR CRAIG: But what  
19 you're telling me is that it's not a  
20 blanket principle that whenever there is  
21 a conflict between a provision in the  
22 shareholder's agreement and a provision  
23 in Ukrainian law, the provision in the  
24 shareholder's agreement trumps the  
25 provision in Ukrainian law. You're not

1 Lykke - Direct  
2 the law.  
3 ARBITRATOR CRAIG: And Kyivstar  
4 is headquartered in Ukraine; right?  
5 THE WITNESS: Yes.  
6 ARBITRATOR CRAIG: And what  
7 percentage of its operations are  
8 conducted in Ukraine?  
9 THE WITNESS: Almost all. I'm  
10 not quite sure about percentage. It's  
11 clearly Ukrainian.  
12 ARBITRATOR CRAIG: It's a  
13 registered Ukrainian company?  
14 THE WITNESS: Yes. And I think  
15 most of its business, if not all of it,  
16 is in Ukraine.  
17 ARBITRATOR CRAIG: Now, in the  
18 event there is a provision in the  
19 shareholder's agreement that conflicts  
20 with Ukrainian law, as the lawyer to  
21 Kyivstar, how would you resolve the  
22 question of what law or what provision  
23 governs Kyivstar?  
24 THE WITNESS: Well, not being a  
25 Ukrainian lawyer, but in general terms,

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1 Lykke - Direct  
2 telling me that, are you?  
3 THE WITNESS: No.  
4 ARBITRATOR CRAIG: Now, I have  
5 another question which has to do with  
6 your knowledge as to the way in which  
7 Storm or Alfa Group ratified the  
8 agreement, if any ratification was done.  
9 That was negotiated in 2002. And I'm  
10 talking about the voting rights  
11 agreement with the attached proposed  
12 shareholder's agreement.  
13 Are you aware of any actions that  
14 Storm or Alfa Group -- actually, I'm  
15 asking about Storm here, that Storm took  
16 to ratify the approval of that  
17 agreement?  
18 THE WITNESS: No. Not other than  
19 in practice of --  
20 ARBITRATOR CRAIG: I'm sorry, I  
21 didn't understand you. At the time in  
22 2002, you had officials from Storm  
23 signing the agreement, did you not?  
24 THE WITNESS: Yes.  
25 MR. SILLS: You're talking about



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1 Lykke - Direct  
2 the voting agreement?  
3 ARBITRATOR CRAIG: I'm talking  
4 about the voting agreement.  
5 MR. SILLS: And the resolutions  
6 supporting that, is that what you're  
7 asking?  
8 ARBITRATOR CRAIG: I'm asking if  
9 there were any other actions taken by  
10 Storm officials that you're aware of  
11 associated with just signing the  
12 document, over and above that, that  
13 Storm took to ratify that agreement?  
14 THE WITNESS: I'm not quite sure  
15 I understand the question as to what  
16 other actions they took except for  
17 complying with it.  
18 ARBITRATOR CRAIG: Well, you  
19 understand that a representative of  
20 Storm signed the agreement; correct?  
21 THE WITNESS: Yes.  
22 ARBITRATOR CRAIG: And on that  
23 basis you believe Storm is obligated to  
24 comply with the terms of the agreement;  
25 correct?

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1 Lykke - Direct  
2 THE WITNESS: Yes.  
3 ARBITRATOR CRAIG: You were aware  
4 of that?  
5 THE WITNESS: Yes.  
6 MR. O'DRISCOLL: Mr. Craig, sorry  
7 to interrupt. I just want to clarify  
8 one thing. It may be a language issue.  
9 Ratification suggests post-signing  
10 approval. I think you mean presigning  
11 approval, is that not correct?  
12 ARBITRATOR CRAIG: Well, I don't  
13 know. It could be either one to me.  
14 THE CHAIRMAN: Go ahead.  
15 ARBITRATOR CRAIG: I will ask you  
16 about both. Were you aware of any  
17 actions taken by the shareholders of  
18 Storm or the directors of Storm prior to  
19 the signature on the document  
20 authorizing the signature to be made?  
21 THE WITNESS: Yes. They have an  
22 internal process and attach certain  
23 corporate documents showing -- showing  
24 approval of the agreements which was  
25 attached to the certificates of

1 Lykke - Direct  
2 THE WITNESS: Yes.  
3 ARBITRATOR CRAIG: Is there  
4 anything else, other than the signature  
5 on the document, on the agreement  
6 itself, that you would point to that  
7 says that Storm is obligated to comply  
8 with the terms of the agreement?  
9 THE WITNESS: Well, it's a seal  
10 on it. We received important  
11 documentation around it. Is that the  
12 kind of thing you're asking about?  
13 ARBITRATOR CRAIG: Yes. I'm  
14 trying to find out what it is you  
15 understand was required in 2002 for  
16 Storm to certify, if anything, other  
17 than just a signature.  
18 THE WITNESS: Well, they have the  
19 chairman approving it. They have an  
20 internal process, which was referred to  
21 in the certificates of incumbency.  
22 ARBITRATOR CRAIG: Were you aware  
23 also that the participants ratified --  
24 at a shareholders meeting ratified the  
25 agreement?

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1 Lykke - Direct  
2 incumbency when it was signed.  
3 ARBITRATOR CRAIG: And after the  
4 signature was affixed to the document,  
5 are you aware of any other actions taken  
6 by Storm shareholders, Storm directors,  
7 or officials of Storm, participants of  
8 Storm, to ratify the approval or to  
9 approve of that agreement?  
10 THE WITNESS: No. I think that  
11 was done in advance.  
12 ARBITRATOR CRAIG: I beg your  
13 pardon.  
14 THE WITNESS: I think that was  
15 done in advance.  
16 ARBITRATOR CRAIG: In advance?  
17 THE WITNESS: Yes.  
18 ARBITRATOR CRAIG: Okay. I think  
19 I'm done, for the time being.  
20 THE CHAIRMAN: Anything else,  
21 Mr. Sills?  
22 MR. SILLS: Can I just have one  
23 moment. If I could just follow up on a  
24 few of these questions.  
25



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1 Lykke - Direct

2 BY MR. SILLS:

3 **Q. I'd like to follow up first on**  
 4 **Mr. Craig's questions concerning the**  
 5 **relationship between Ukrainian law and its**  
 6 **requirements and the shareholder agreement**  
 7 **and its requirements. Could you turn to**  
 8 **page 13. I'm sorry. Could you turn to**  
 9 **section 6.03 of the shareholder's agreement.**

10 THE WITNESS: 602?

11 **Q. 603.**

12 A. Yes. Okay.

13 ARBITRATOR CRAIG: Entitled

14 "Amendment of Charter."

15 MR. SILLS: Right.

16 A. Yes.

17 **Q. First, with reference to the**  
 18 **first sentence of section 6.03A -- I'm sorry,**  
 19 **with the first and second sentences.**

20 **What was the business deal**  
 21 **between the parties as to conforming any of**  
 22 **the corporate documents to the shareholder's**  
 23 **agreement, in the event that there was a**  
 24 **problem under Ukrainian law?**

25 A. Well, it was to -- it was to

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1 Lykke - Direct

2 amend the charter to be consistent with the  
 3 shareholder agreement.

4 **Q. And let me give a concrete**  
 5 **example. At the time the shareholder's**  
 6 **agreement was negotiated and executed, were**  
 7 **you aware of any requirement of Ukrainian law**  
 8 **that directors of a closed joint stock**  
 9 **company be shareholders?**

10 A. No.

11 **Q. I'd like you to assume for the**  
 12 **moment that sometime after the agreement was**  
 13 **executed in 2004 that such a requirement came**  
 14 **into being under Ukrainian law, so that in**  
 15 **order to sit on the board of directors of**  
 16 **Kyivstar, it was necessary to be a**  
 17 **shareholder.**

18 A. Okay.

19 **Q. And I'd also like you to assume**  
 20 **that it would be possible for each of the**  
 21 **economic owners in the company to create one**  
 22 **or more subsidiaries holding one share each.**  
 23 **So that each of those subsidiaries would be a**  
 24 **shareholder. Do you understand the**  
 25 **hypothetical so far?**

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1 Lykke - Direct

2 A. Yup.

3 **Q. Under this provision that we're**  
 4 **looking at, 6.03, is it your opinion that the**  
 5 **parties would be obligated to enter into an**  
 6 **amendment to the charter making those new**  
 7 **subsidiaries shareholders eligible to be**  
 8 **directors, in order to preserve the**  
 9 **governance scheme that the parties agreed to**  
 10 **in the shareholder's agreement?**

11 A. Before just going through the  
 12 details there, that would be kind of the  
 13 obvious interpretation of the generality of  
 14 the shareholder's agreements that the parties  
 15 should do, use their best efforts to be able  
 16 to conform with what have been agreed.

17 And if there came such changes in  
 18 law in Ukraine, then the parties were  
 19 obligated to make efforts to solve the  
 20 problems so that the spirit of the agreement,  
 21 and the agreement itself, for instance, this  
 22 five, four number of directors, could be  
 23 still worked, so to speak, in Ukraine between  
 24 the parties.

25 **Q. As a general matter, would it be**

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1 Lykke - Direct

2 **fair to say that the parties agreed to work**  
 3 **within Ukrainian law to preserve and**  
 4 **effectuate the governance structure agreed to**  
 5 **in the shareholder's agreement?**

6 A. Absolutely. That was, for  
 7 instance, the reason for all the wording in  
 8 the shareholder's agreement about Alfa and  
 9 Storm being obligated to show up at the  
 10 general meetings and board meetings when the  
 11 board --

12 **Q. Could you just repeat the last**  
 13 **part of your answer.**

14 A. They were obligated -- in the  
 15 shareholder's agreement they undertook to  
 16 show up at board meetings and general  
 17 meetings.

18 **Q. And that brings me to my next**  
 19 **question. Mr. Craig was asking you about**  
 20 **veto rights. Other than the negotiated veto**  
 21 **rights that you and he were discussing**  
 22 **calling for a super majority, did Storm ever**  
 23 **suggest that it would have the right to veto**  
 24 **corporate action by boycotting board or**  
 25 **shareholders meetings?**

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**Lykke - Direct**

A. Well, what I heard from Mr. Hansen was that, and this was -- that was something they indicated earlier in negotiations. We then said that on that basis we are just stopping all negotiations, and then they kind of thought about it and came back and agreed to not use those kinds of tactics.

**Q. Continue, please.**

A. Yeah. Then they came back and said they have reconsidered and were willing to waive those kind of legal rights under Ukrainian law. And we then carefully drafted their obligation to not use that legal right under Ukrainian law in the shareholder agreements, and on that basis we proceeded with the transaction.

**Q. And is that reflected in the final section of section 6.03A which reads, "The shareholders also agree, to the extent permitted by applicable law, to waive any rights or privileges granted to them, including but not limited to redemption rights, rights of first refusal and the like**

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**Lykke - Direct**

**by applicable law or the shareholders that conflict or are inconsistent with the terms and conditions of this agreement"?**

A. Yes.

**Q. And look, if you would, at page 13, clause 2.05B-2.**

A. Yeah. That was -- that was, by the way, an even clearer undertaking by Storm than the more general one just referred to. And that was just because of this problem.

**Q. You were also questioned by the panel, Mr. Lykke, concerning the resolutions passed in 2002. Do you remember that?**

A. Yes.

**Q. And do you have a copy of those resolutions with you?**

A. If they're in the kit, I do.

**Q. It was separately e-mailed to you last night. Did you bring that with you?**

A. Yeah, yeah. Okay. Yeah, yeah.

MR. SILLS: Mr. Chairman, this is Exhibit L to the evidentiary brief.

**Q. Look, if you would, you see that there's a lot of Ukrainian language and then**

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**there's, toward the end, there's something that says, "Notice regarding resolutions adopted by written polling."**

A. Uh-huh.

**Q. Do you have that before you?**

A. No. Sorry. I don't have that in front of me, actually.

**Q. Could you turn to it.**

ARBITRATOR CRAIG: No. He said --

A. I don't have it.

ARBITRATOR CRAIG: What number are we?

MR. SILLS: L.

THE CHAIRMAN: He doesn't have it, Mr. Sills.

ARBITRATOR JENTES: We're talking about the same resolutions that we've been through on the record.

MR. SILLS: Right.

**Q. And it was your understanding that in 2002 Mr. Nilov was expressly authorized to execute the shareholder's agreement; is that correct?**

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**Lykke - Direct**

A. Yes.

**Q. And other than the two certificates of incumbency that you and I were discussing a little while ago, did you believe that, in light of that express authorization in 2002, it was necessary or appropriate to obtain any further documentation of Mr. Nilov's authority to execute the 2004 agreement?**

A. No. Not really.

ARBITRATOR CRAIG: Does your answer change, Mr. Lykke, if you thought that was a material change in the 2002 agreement that was negotiated?

THE WITNESS: Well, if -- if the change would have been very, very material, it could have been out of the question whether one needed further -- further resolutions.

ARBITRATOR CRAIG: But I'm giving you the question that it was a material change. I was asking you to assume that it was a material change between 2002 and 2004. If there was a material

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1 Lykke - Direct  
 2 change between the shareholder's  
 3 agreement as drafted in 2002 and as  
 4 drafted in 2004, you would agree that  
 5 further authorization or additional or  
 6 new authorization would be required,  
 7 wouldn't you?  
 8 THE WITNESS: Not necessarily,  
 9 no. It would depend on what you mean by  
 10 "material change."  
 11 I mean, Mr. Nilov --  
 12 ARBITRATOR CRAIG: I'll accept  
 13 your definition. Whatever definition  
 14 you want to make, I'll accept your  
 15 definition. And if there's a material  
 16 change in the text of the agreement  
 17 between 2002 and 2004, would you, as the  
 18 lawyer for one of the parties, want to  
 19 seek new authorization or new authority  
 20 to enter into that new agreement?  
 21 THE WITNESS: For Mr. Nilov as  
 22 general manager, and based upon the old  
 23 2002 approvals, it would depend on what  
 24 is material. And I would give the  
 25 general manager a rather big leeway in

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1 Lykke - Direct  
 2 believe that the threshold for when you  
 3 have to go back and seek new approvals  
 4 would be influenced by whether it was an  
 5 advantage -- a positive amendment or  
 6 negative one, so to speak. I think that  
 7 would go into the legal equation.  
 8 ARBITRATOR CRAIG: Could I ask  
 9 again, Mr. Lykka, whether you would  
 10 consult Ukrainian law or New York law as  
 11 to the definition of what is material?  
 12 THE WITNESS: I would go to  
 13 New York law.  
 14 ARBITRATOR CRAIG: And why's  
 15 that?  
 16 THE WITNESS: Because New York  
 17 law governs the agreements and that's  
 18 how we have to measure whether it's  
 19 material or not.  
 20 THE CHAIRMAN: Anything else?  
 21 Thank you very, very much. We are the  
 22 beneficiaries of great technology.  
 23 Thank you, and off the record.  
 24 (Discussion off the record.)  
 25 THE CHAIRMAN: Well, anything

1 Lykke - Direct  
 2 those kinds of decisions. But,  
 3 obviously, you come to a point where you  
 4 would need a kind of a new -- a new  
 5 interim resolution. And in a way what  
 6 happened in 2004 was that Telenor  
 7 obtained new certificates of incumbency  
 8 from the chairman of Storm confirming  
 9 that he did have the authorization.  
 10 ARBITRATOR JENTES: Would it also  
 11 be relevant, in your viewpoint, if the  
 12 change that was material was adverse to  
 13 Telenor and favorable to Storm, which I  
 14 think is the case here?  
 15 So that do you believe that if  
 16 Telenor is confronted with a situation  
 17 where the change is only going to be  
 18 adverse to it, that it needs to go back  
 19 and obtain approval from the Storm side  
 20 of the equation?  
 21 THE WITNESS: If the change was  
 22 detrimental to Storm?  
 23 ARBITRATOR JENTES: No. It's  
 24 detrimental to Telenor, not to Storm.  
 25 THE WITNESS: Well, I would

1 Lykke - Direct  
 2 else, Mr. Sills?  
 3 MR. SILLS: I think, other than  
 4 the schedule for going forward that the  
 5 panel has set out, which is fully  
 6 acceptable to us -- there is one very  
 7 small matter which is we had asked for a  
 8 correction of a small wording error in  
 9 the permanent final award.  
 10 ARBITRATOR CRAIG: All those  
 11 corrections were adopted unanimously.  
 12 THE CHAIRMAN: There are two  
 13 errors which will be -- which are  
 14 corrected but which will be formally  
 15 corrected in a redistributed order.  
 16 MR. SILLS: Thank you. Other  
 17 than -- it's always the corporate  
 18 lawyers who call your attention to those  
 19 details.  
 20 THE CHAIRMAN: No, no. That's  
 21 important.  
 22 MR. SILLS: Other than that, I  
 23 think we're done for the day. I would  
 24 only thank the panel for being present  
 25 today. And we're prepared to move

1 Lykke - Direct  
 2 forward, and we look forward to getting  
 3 our papers in to you on the 19th.  
 4 THE CHAIRMAN: Subject to  
 5 consulting with my fellow panel members,  
 6 the tribunal will promptly issue a  
 7 scheduling order, tomorrow morning, to  
 8 both you and to Storm highlighting the  
 9 January 19th date for submissions.  
 10 Anything else? We also thank our  
 11 witness for coming a great distance.  
 12 Thank you. And this arbitration hearing  
 13 is adjourned.

14 (Time noted: 3:22 p.m.)  
 15  
 16  
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1 December 18, 2006  
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5 WITNESS EXAMINATION BY PAGE  
 6 TORSTEIN MOLAND

7 MR. MUSOFF - Direct 41

8 MR. SILLS - Direct 140

9 FREDRIK LYKKE

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13 CLAIMANT I.D. EVID.

14 1 letter to Sigmund Ekhougen, 125

15 undated, signed by Vadim

16 Klymenko, with cc to Robert

17 Sills and Alexei Reznikovich

18 F Halverson's affidavit 127  
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 21  
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#### 1 C E R T I F I C A T E

2  
 3 STATE OF NEW YORK )  
 4 : ss.

5 COUNTY OF NEW YORK )  
 6

7 I, AMY E. SIKORA, CRR, CSR, RPR,  
 8 a Certified Realtime Reporter, Certified  
 9 Shorthand Reporter, Registered Professional  
 10 Reporter, and a Notary Public within and for  
 11 the State of New York, do hereby certify that  
 12 the foregoing proceedings were taken before me  
 13 on December 18, 2006;

14 That the within transcript is a  
 15 true record of said proceedings;

16 That I am not connected by blood or  
 17 marriage with any of the parties herein nor  
 18 interested directly or indirectly in the matter  
 19 in controversy, nor am I in the employ of any  
 20 of the counsel.

21 IN WITNESS WHEREOF, I have hereunto  
 22 set my hand this 20th day of December, 2006.  
 23  
 24

25 AMY E. SIKORA, CRR, CSR, RPR

A				
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